

NOVEMBER 8, 2005 AGENDA REPORTS

Agenda Item No. 5a

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1003

TO: Mayor and City Council Members

SUBJECT: Petitions to construct Paving and Drainage Improvements in The Fairmont 3rd Addition (West of 127th St. East, North of 21st) (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Petitions.

Background: The Petitions have been signed by one owner, representing 100% of the improvement districts.

Analysis: The projects will provide paving and drainage improvements within a residential development located west of 127th St. East, north of 21st.

Financial Considerations: The Petitions totals \$375,000. The funding source is special assessments.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or the majority of the property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the Petitions, adopt the Resolutions and authorize the necessary signatures.

Agenda Item No. 5b

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1004

TO: Mayor and City Council Members

SUBJECT: Petitions for Sanitary Sewer and Water Distribution System to serve Krug North 2nd Addition (north of 21st, west of 143rd St. East) (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the new Petitions.

Background: On August 2, 2005, the City Council approved Petitions for sanitary sewer and water distribution system to serve Krug North 2nd Addition. The developer has submitted new Petitions to reallocate special assessments to equalize total assessments within the development and reflect recent platting activity. The signature on the petitions represents 100% of the improvement districts.

Analysis: These projects will serve a new residential development located north of 21st, west of 143rd Street East.

Financial Considerations: The original Petitions total \$266,000. The revised Petitions total \$345,000. The funding source is special assessments.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or the majority of the property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the new Petitions, adopt the Resolutions and authorize the necessary signatures.

Agenda Item No. 7

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1005

TO: Mayor and City Council

SUBJECT: Special Events

INITIATED BY: City Manager's Office

AGENDA: Consent

Recommendation: Approve the request for street closures.

Background: In accordance with the Special Events Procedure, event sponsors are to notify adjacent property owners and coordinate arrangements with Staff, subject to final approval by the City Council.

Analysis: The following street closure requests have been submitted (see attached maps):

30th Annual Turkey Trot – Saturday, November 19, 8:00 p.m.-10:00 p.m.

§ Sim Park Drive to Amidon just south of 13th Street at the bike path (streets will be opened/barricades removed as last runners pass)

Wichita Symphony Orchestra Young People's Concert, November 8-10, 9:00 a.m.-Noon

§ Section of Century II Drive from Main Street north to Douglas Avenue

§ Perimeter Drive around east side of Century II

KS Sports Hall of Fame Grand Opening, Thursday, November 17, 10:00 a.m. - Noon

§ 238 N. Mead from First Street to edge of adjacent parking lot

Bradley Fair/Ronald MacDonald House Event, Friday, November 25, 4:00-6:00 p.m.

§ Bradley Fair Parkway from Rock Road east & north to 21st Street

Christmas Tree Lighting & Night with Santa, Friday, December 8, 5:30–7:00 p.m.

§ Sycamore from old railroad track site north to First/McLean

§ First Street from McLean east to Waco

§ Waco from First Street south to Douglas

§ Douglas from McLean east to Water

§ McLean from First Street south to Douglas

Police security is arranged to remove street barricades as necessary to allow emergency vehicle access during entire designated time period

Financial Consideration: Inasmuch as possible, event sponsors are responsible for all costs associated with special events.

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Event sponsors notifying every property and/or business adjoining any portion of the closed street; (2) Coordination of event arrangements with City Staff; (3) Hiring off-duty public safety officers as required by the Police Department; (4) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; (5) Submitting a Certificate of Insurance evidencing general liability insurance which covers the event and its related activities, including the naming of the City as an additional insured with respect to the event's use of the closed City streets.

Agenda Item No. 8a

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1006

TO: Mayor and City Council

SUBJECT: Contract-Wichita Minority Business Development Council

INITIATED BY: Finance Department

AGENDA: Consent

Recommendation: Approve the contract.

Background: On August 16, 2005, the City Council approved the revised budget that included funding assistance in the amount of \$35,000 for the Wichita Minority Business Development Council, Inc for economic development services. Staff has developed the necessary contractual documents and performance measurements.

Analysis: The Wichita Minority Business Development Council (WMBDC) is a non-profit organization that was created in January 1991. Its mission statement is to promote and enhance minority and woman-owned business enterprises by increasing business opportunities and access to mainstream markets. The primary goal is to improve the economic viability of small, minority and women owned businesses in Wichita, with an emphasis on job creation. WMBDC will provide networking opportunities among mutually supportive businesses as well as seminars to grow their business.

A contract has been negotiated with the Wichita Minority Business Council, which establishes performance measures and performance outcomes. Small, minority and women owned businesses would be served under the contract. The contract term is January 1, 2005 to December 31, 2005.

Financial Considerations: The contract amount is \$35,000 and funding is appropriated in the 2005-revised budget.

Legal Considerations: The contract has been reviewed and approved as to form by the City Law Department.

Recommendations/Actions: It is recommended that the City Council approve the contract and authorize the Mayor to sign.

Agenda Item No. 8b

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1007

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement for Professional Services for Brooks Landfill-C&D Facility (District VI).

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement

Background: On December 21, 2004, The City Council approved an Agreement for Professional Services for a permit modification for the second phase of filling with construction and demolition (C&D) waste at the Brooks Landfill.

Analysis: As the design was being undertaken it was discovered that current survey information was not available for the area when the Phase II filling will occur and for the area where the yard waste composting site is proposed to be expanded.

The Supplemental Agreement provides for a ground survey of the new fill area and the yard waste composting area to ensure the maximum possible air space will be developed and all drainage systems will function properly.

Financial Considerations: The Supplemental Agreement is for a fee of \$3,900. The original Agreement was for a not-to-exceed total of \$44,383.00.

Legal Considerations: The Law Department has approved the Supplemental Agreement as to form.

Recommendations/Actions: It is recommended that the City Council approve the Supplemental Agreement and authorize the City Manager to sign it.

Agenda Item No. 8c

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1008

TO: Mayor and City Council

SUBJECT: Transit Service Agreement for Oaklawn Improvement District. (District III)

INITIATED BY: Wichita Transit

AGENDA: Consent Agenda

Recommendation: Approve contract to allow Wichita Transit to provide transit service to the Oaklawn Improvement District.

Background: For the past several years, Wichita Transit has provided fixed-route and paratransit van service to the Oaklawn Improvement District. Currently, Sedgwick County reimburses Wichita Transit for the actual cost of providing such service according to a year-by-year contractual agreement. The purpose of this action is to establish the contractual agreement for 2005, with option years through 2007.

Analysis: Wichita Transit operates one fixed-route, which provides service the the Oaklawn area. Paratransit service is also provided to Oaklawn based on ADA guidelines (which require service in areas in which fixed-route service is provided). In 2005, an estimated 736 hours of fixed-route service will be provided. The estimated hourly cost for this service is \$44.58 (\$61.66 per hour less revenues and federal funding credit). Paratransit service cost is estimated at \$15.40 per trip, with an estimated 20 trips per month to be provided in 2005.

Financial Considerations: Based on the projected service levels, the total projected revenue from the 2005 agreement will be \$26,950 after deducting passenger revenues and federal credit. The adopted 2005 budget includes the expenditure authority necessary to provide the service.

Legal Consideration: City Council approval is required for contracts in excess of \$25,000.

Recommendations/Actions: Approve the contract and authorize the necessary signatures.

AGREEMENT

THIS AGREEMENT, made and entered into on the _____ day of _____, 2005, by and between the City of Wichita, Kansas, hereafter referred to as "City," and the Board of County Commissioners of Sedgwick County, Kansas, hereafter referred to as "County."

WITNESSETH:

WHEREAS, County desires to provide public transportation to a certain unincorporated area of Sedgwick County located within and around the general civinity of the Oaklawn Improvement District; and

WHEREAS, City operates Wichita Transit, which provides public transportation throughout the City of Wichita; and

WHEREAS, County desires to contract with City to provide public transportation through Wichita Transit to said unincorporated area of Sedgwick County.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties hereto agree as follows:

1. City, through Wichita Transit, agrees to provide public transportation to the unincorporated area of Sedgwick County located within and around the general civinity of the Oaklawn Improvement District through the extension of a bus route to said area by way of Wichita Transit's regular route service. In addition, City will provide paratransit van services to meet Americans With Disabilities Act (ADA) guidelines.
2. Route service will operate Monday through Saturday and will run a minimum of eighteen (18) one-way trips per day. Paratransit services will operate Monday through Saturday and will be provided under present program guidelines. Trip totals are subject to change as demand and/or revenues require, with proper coordination between City and County.
3. County agrees to pay the City's actual costs to operate said services to the Oaklawn Improvement District, which, for 2005, is estimated to cost \$26,950. City's costs for this service will not exceed this amount without County approval.
4. City agrees to bill County on a quarterly basis and provide, at the same time, an operating report on the Oaklawn service, which will include ridership trips, passenger fare revenue, and other pertinent information.
5. City shall have sole discretion as to the time, means, and methods of providing bus service on the Oaklawn service, and the only obligation of County pertaining thereto and the only liability assumed by County hereunder is to pay the costs required in paragraph 3 above.
6. Either party may terminate this Agreement upon sixty (60) days' advance written notice to the other party. Such notice may be hand-delivered or sent via first-class mail. Notice must be given by City to County Cler, Sedgwick County Legal Department and the director of the Sedgwick County Bureau of Community Development. Notice must be given by the County to the City Cler, City of Wichita Department of Law, and the General Manager of Wichita Transit.
7. The term of this Agreement shall be for the period commencing January 1, 2005, and ending on December 31, 2005, with an option to renew the Agreement under the same terms and conditions for two (2) successive one (1)-year terms by mutual agreement of the parties.

8. This Agreement is not intended to and, in fact, does not create a partnership or joint venture relationship between the parties hereto. City shall be an independent contractor to County for purposes of this Agreement.

9. This Agreement constitutes the complete agreement between the parties hereto. No amendment, wawiver, or modification of this agreement shall be effective unless reduced to writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS
OF WICHITA, KANSAS

CITY
By order of the City Council

_____, Chairman

Carlos Mayans, Mayor

Attest: Attest:

Brenda Shell

Karen Sublett

Approved as to Form:

Assistant County Counselor Gary E. Rebenstorf
Director of Law and City Attorney

Agenda Item No. 8d

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1009

TO: Mayor and City Council

SUBJECT: Subsidy Increase of ADA-Purchased Rides

INITIATED BY: Wichita Transit

AGENDA: Consent Agenda

Recommendation: Authorize increase of ADA subsidy rates for purchased rides and approve the contract.

Background: The current Purchased Transportation program that enables Wichita Transit to satisfy federal ADA requirements began in 1991. At that time, Wichita Transit subsidized rides that were being provided by private operators (mostly human service agencies) to the disabled in lieu of expanding Wichita Transit Special Services in-house. Subsidy rates were negotiated with agencies on an individual basis and, in some cases, included leasing wheelchair-accessible vans for \$1.00 per year as additional subsidy support. Those subsidy rates varied from \$1.50 to \$3.00 per trip, depending on the agencies operations and whether or not vehicles were leased to the agencies as part of the subsidy. Those rates have not changed since then, and the van lease program has been discontinued.

Analysis: Over the last year, Wichita Transit staff met with agencies that have elected to participate in the Purchased Ride Program. Based on those meetings, a proposed increase in subsidy has been arrived at. The subsidy rate would be \$4.00 for ambulatory and \$5.00 for wheelchair passengers until December 31, 2006. During the course of 2006, staff will be working with the agencies to address their increasing costs issues and explore alternatives to afford a more equitable subsidy, considering WT's budget and available revenues.

Financial Considerations: Based on the existence of carry-over funds, plus money from FTA, KDOT, and the City, sufficient funds exist for the program through year 2007 at the \$4.00/\$5.00 rate. Beyond 2007 shortfalls begin to show, particularly if increases in subsidy or rides are realized.

Legal Consideration: The ADA provides for the purchase of ADA paratransit rides provided the level of service to individuals is the same as that offered by the City. The terms of the Purchased Ride Agreement require monthly reporting to ensure a similar level of service. The City Law department has reviewed the contract as to form.

Recommendations/Actions: It is recommended that the City Council approve the contract and authorize the necessary signatures.

PURCHASED ADA PARATRANSIT RIDES CONTRACTOR AGREEMENT

This Agreement is entered into this _____ day of _____, 20__ by and between the City of Wichita - Wichita Transit, hereinafter referred to as "City", and _____ hereinafter referred to as "Contractor." Hereinafter both "City" and "Contractor" shall be jointly referred to as "parties."

WHEREAS, The purpose of the program is to provide for purchased ADA paratransit rides, and

WHEREAS, The Contractor guarantees the ability to provide ADA paratransit rides in a safe and professional nature, as required by City, to eligible passengers within the corporate limits of the City of Wichita,

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained herein, the parties hereto agree as follows:

1. Term: This Agreement shall become a legal and binding contract upon execution of same by both parties, effective retroactively from _____, 20__, until _____.
2. Compensation: Parties expressly understand and agree that payments made to the Contractor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.
3. Termination: Either party, upon thirty (30) days written notice, stating the effective date of the termination, may terminate this Agreement. Whether the City or the Contractor cancels this Agreement as provided herein, the Contractor shall be paid for work satisfactorily completed to date of termination, as long as the provisions applicable to Billing and Payment have been met by the Contractor.
4. Indemnification: The Contractor shall indemnify, defend and hold harmless the City and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from, (i) the provision by the Contractor of transportation services hereunder, or (ii) the failure of the Contractor to fulfill any of its obligations pursuant to this Agreement.
5. Duties: As listed in Appendix A, the Contractor and the City shall perform duties pursuant to this Agreement.

6. Local and Federal Compliance: The parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one time submissions, listed in Appendixes A and B.

7. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

8. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both parties.

9. Incorporation of Appendices: Appendix A and B are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

Carlos Mayans, Mayor

ATTEST:

City Clerk
City of Wichita, Kansas

APPROVED AS TO FORM:

City of Wichita, Department of Law

CONTRACTOR

Authorized Contractor Representative

APPENDIX A GENERAL CONTRACTUAL PROVISIONS FOR CONTRACTOR

ARTICLE 1: AUTHORITY TO CONTRACT.

1.1 AFFIRMATION OF LEGAL AUTHORITY. The Contractor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Contractor to act in connection with the application and to provide such additional information as may be required.

1.2 REQUIRED DOCUMENTATION. Corporations, limited liability companies, or other forms of business requiring statutory conformance shall furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. A corporation shall furnish a copy of its Corporate Resolution evidencing the authority to sign this Agreement, executed by the Corporation's Secretary or President.

ARTICLE 2: RELATIONSHIP OF PARTIES. It is agreed that the legal relationship between Contractor and City of Wichita (City) is of a contractual nature. Both parties assert and believe that the Contractor is acting as an independent contractor in providing the services and performing the duties provided for by this Agreement. The Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of the City. As an independent contractor, the Contractor, and employees of the Contractor will not be within the protection or coverage of City's worker's compensation insurance, subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall the Contractor, and employees of the Contractor, be entitled to any current or future benefits provided to employees of the City. Further, the City shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by the City to the Contractor.

ARTICLE 3: SCOPE OF SERVICES.

3.1 PURPOSE. It is mutually agreed by and between City and Contractor that the purposes of this Agreement are for the Contractor to efficiently provide eligible passengers a level of curb-to-curb paratransit service equivalent to the curb-to-curb paratransit service operated by Wichita Transit and to provide Wichita Transit those operating statistics required for Federal reporting.

3.2 SPECIAL NEEDS OF ELIGIBLE PASSENGERS. All eligible passengers have one or more disabilities that preclude their use of regular fixed route transit. Many will require special assistance when boarding or leaving the paratransit vehicle. The Contractor shall be responsible for assuring that all drivers are capable, competent, courteous and sensitive to these special needs.

ARTICLE 4: GENERAL PROVISIONS

4.1 DEFINITIONS.

(A) UNIT OF SERVICE – One, one-way trip equals one unit of service per eligible passenger. A round-trip taken by an eligible passenger equals two units of service. Unit of service is the basis for subsidy reimbursement.

(B) ELIGIBLE PASSENGER (or Passengers) – Individuals who are certified and approved as ADA paratransit eligible by Wichita Transit, both ambulatory and non-ambulatory.

(C) PERSONAL CARE ATTENDANT (PCA) – A person who has been approved to ride free of charge with an eligible passenger for the purpose of providing the passenger with mobility assistance. Qualified drivers employed by the Contractor may act as a PCA for eligible passengers who are also the clients of the Contractor (human service agency).

(D) EQUIVALENT LEVEL OF PARATRANSIT SERVICE – The following criteria are used to evaluate the Contractor's performance relative to the level of paratransit service operated by the Wichita Transit:

(1) On-time performance for pick-ups. Actual pick-up times shall be evaluated relative to a 30-minute pick-up window.

(2) Length of time an eligible passenger spends on the paratransit vehicle. Length of time shall be evaluated relative to a 90-minute maximum ride time.

(E) NO-SHOW – When an eligible passenger fails to board the vehicle when the vehicle arrives on time (within the 30-minute pick-up window). Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for “no-shows”.

(F) 30-MINUTE PICK-UP WINDOW – The 30-minute timeframe provided to the eligible passenger that indicates when the paratransit vehicle has been scheduled to arrive. Vehicles arriving within the 30-minute pick-up window are considered on time.

(G) MISSED TRIP – When the vehicle arrives for the pick-up, at a time after the end of the 30-minute pick-up window, and the client does not board the van. Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for “missed trips”.

(H) PASSENGER FARE – For eligible passengers, the amount of money that the Contractor is to collect when the passenger boards the paratransit vehicle. Pursuant to subsection 9.4(D) of this Agreement, the passenger fare is to be retained by the Contractor as partial subsidy payment. As required by The ADA, passenger fare for eligible passengers shall not be more than twice the price of regular bus fare.

(I) REFERRED ADA TRIP - A subscription service ride request referred to an agency by WT. Possible Contractor acceptance of a referred trip is provided for in subsection of 9.4(C) of this Agreement.

(J) SUBSCRIPTION SERVICE – A trip to the same place at the same time at least twice a week for a minimum period of 30 days.

4.2 SERVICE AREA. All transportation service provided pursuant to this Agreement shall be limited to trips within the corporate limits of the City of Wichita, within the Oaklawn Improvement District, or within that portion of The City of Bel Aire that lies within 3/4-mile of a fixed bus route operated by Wichita Transit.

4.3 PASSENGER ELIGIBILITY. The City, acting through Wichita Transit, shall establish a procedure to determine eligible passengers. No person shall be transported under this Agreement who has not first been determined by the City as eligible for the service.

4.4 LAWS TO BE OBSERVED. The Contractor shall make themselves familiar with, and at all times shall observe and comply with Federal, State and local laws, ordinances, and regulations which in any manner govern or affect the conduct of the work and shall indemnify and hold harmless the City and its representatives against any claim arising from the violation of any such law, ordinance or regulation, whether by itself or by its employees.

ARTICLE 5: PERSONNEL

5.1 QUALIFIED PERSONNEL. The Contractor represents that it has, or shall secure at its own expense, all personnel required to perform the transportation service provided under this Agreement. Such personnel shall not be employees of or have any other contractual relationship with the City. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

5.2 MINIMUM WAGES. The Contractor shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.

5.3 EMPLOYEE CONFLICT OF INTEREST. The Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

5.4 EMPLOYEE BACKGROUND CHECKS. The parties to this Agreement recognize that those entities or persons providing government funded services are subject to public scrutiny. Consequently, by entering into this Agreement the Contractor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5.5 below. Such compliance will require the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5.5 PARTICIPANT SAFEGUARD. The Contractor certifies that:

(A) Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement or during the term of this Agreement shall not be permitted to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

(B) Persons convicted of any crime of moral turpitude, including but not limited to sex offenses and crimes against children, during the ten-year period concluding on the date of execution of this Agreement or during the pendency of this Agreement shall not be permitted to interact in any way with persons served pursuant to this Agreement; and

(C) Persons convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding on the date of execution of this Agreement or during the pendency of this Agreement shall not be permitted to operate a vehicle in which an eligible passenger is provided transportation pursuant to this Agreement. For purposes of this section, “serious traffic offense: shall not include any offense deemed a “traffic infraction” under K.S.A. 8-2116 and 8-2118.

(D) Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City of Wichita Law Department. The Department of Law’s decision shall be final for purposes of compliance with this Agreement. The term “conviction” shall include convictions from any Federal, State, Local, Military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgment program in lieu of prosecution.

ARTICLE 6: PROHIBITION OF CONFLICT OF INTEREST.

6.1 INTEREST OF PUBLIC OFFICIALS AND OTHERS. No officer or employee of the City, no member of its Governing Body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person’s personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested. Nor shall any officer or employee of the City or any member of its Governing Body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2 INTEREST OF CONTRACTOR. The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

6.3 EMPLOYEE CONFLICTS. Situations in which a) an employee of the City shall also be an employee of the Contractor at the time of the Agreement, b) an employee of the Contractor

seeks additional / alternative employment with the City during term of the Agreement, or c) an employee of the City seeks additional / alternative employment with the Contractor during term of the Agreement, shall require written notice of the City. The City shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Contractor or Contractor's competitors.

ARTICLE 7: FUNDING / CASH BASIS AND BUDGET LAWS. The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

ARTICLE 8: REPORTS, RECORDS AND INSPECTION.

8.1 DOCUMENTATION OF COSTS. Proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges shall support all costs incurred by the Contractor for which the Contractor purports to be entitled to reimbursement. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

8.2 MAINTENANCE OF RECORDS. Except as otherwise authorized by the City, the Contractor shall retain such documentation as listed in subsections 8.1 and 8.3 for a period of not less than three (3) years after receipt of the final expenditure report under this Agreement. This is the case unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond the minimum three (3) year period.

8.3 REPORTS. During the term of this Agreement, the Contractor shall furnish the City, in such form as the City may require, such statements, records, reports, data and information as the City requests pertaining to matters covered by this Agreement. If the Contractor fails to provide all required reports in a timely, complete and accurate manner, the City will withhold payments to the Contractor until such time as all reports are furnished.

(A) COMPLAINT RECORDS. The Contractor agrees to maintain complete records of all complaints received regarding service provided under this Agreement. The Contractor agrees to submit a service complaint report each time a request for reimbursement is submitted. Such report shall identify the general nature of complaints received during the billing period along with any actions taken by the Contractor. The Contractor agrees that complaint records used to prepare complaint reports are subject to review by the City to ensure the accuracy and validity of information reported.

(B) FINANCIAL AND OPERATING DATA. The Contractor shall be responsible for providing financial and operating data as may be required by the City and/or necessary to

comply with the requirements of the National Transit Database of the Urban Mass Transportation Act of 1964, as amended.

(C) **ON-TIME PERFORMANCE AND TRIP LENGTH RECORDS.** For the purpose of determining if the Contractor is providing a level of paratransit service equivalent to that provided by Wichita Transit, the Contractor agrees to maintain records of on-time performance and trip length for all eligible passengers provided paratransit service under this Agreement. The Contractor agrees to submit an on-time performance and trip length report each time a request for billing is submitted. For the billing period, the report shall identify the percentage of pick ups occurring before, during and after the 30-minute pick-up window and the number of trips involving an eligible passenger ride of 90 minutes or greater. The Contractor agrees that on-time performance and trip length records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

(D) **ALCOHOL AND DRUG TEST REPORTS.** The Contractor agrees to submit to the City an annual report that identifies the Contractor's efforts to comply with FTA and U.S. DOT requirements for pre-employment, post-accident and random alcohol and drug testing of safety sensitive employees. The annual alcohol and drug testing report shall be submitted by January 30th.

(E) **NO-SHOW RECORDS.** For the purpose of eliminating trips referrals involving a passenger who demonstrates a pattern of "no-showing" for trips, the Contractor agrees to maintain records of no-shows recorded by passengers provided paratransit service under this Agreement. The Contractor agrees to submit a no-show report each time a request for billing is submitted. For the billing period, the report shall identify the number of no-shows per eligible passenger and the dates on which no-shows were recorded. The Contractor agrees that no-show records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

(F) **MISSED TRIPS.** For the purpose of reporting "missed trips", the Contractor agrees to maintain records of missed trips affecting passengers who are provided paratransit service under this Agreement. The Contractor agrees to submit a missed trip report each time a request for billing is submitted. For the billing period, the report shall identify the number of missed trips affecting eligible passengers and the dates on which missed trips were experienced. The Contractor agrees that missed trip records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

(G) **ADA RIDES.** In order to assure that rides provided pursuant to this Agreement are provided to eligible passengers and that operating statistics needed for Federal reporting are provided, the following is required:

(1) Pursuant to subsection 9.1(B) of this Agreement, each month, the Contractor shall submit an alphabetical listing of those persons who have been provided service during the month who the Contractor has reported as being an eligible passenger (approved by WT as ADA paratransit eligible).

(2) WT will check the names on the list against the database of persons who have been granted ADA paratransit eligibility. WT will provide the Contractor with the names of those individuals who have not been determined as ADA paratransit eligible.

(3) After receipt of the names of non-ADA eligible persons, the Contractor may assist the subject individuals with completion of an ADA Paratransit Eligibility Application OR, shall in the future, discontinue reporting them as eligible passengers on monthly billing.

(H) ACCESS TO JOBS TRIPS. In order to report the number of rides funded through The Access to Jobs Program, and pursuant to 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that Program.

(I) PEAK HOUR RIDES. As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number of rides provided to eligible passengers between 6:00 AM and 10:00 AM and between 2:00 PM and 6:00 PM.

(J) AMBULATORY / WHEELCHAIR RIDES. As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number rides provided to ambulatory persons and the number or rides provided to persons using a wheelchair or similar mobility device.

(K) NEW FREEDOM TRIPS. In order to report the number of rides funded through The New Freedom Program, and pursuant to subsection 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that Program.

8.4 AVAILABILITY OF RECORDS. The Contractor agrees to make any and all of its records, books, papers, documents, and data available to City, or to the authorized representative of the Federal, State or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions at any time during the term of this Agreement and for a period of three (3) years following the final payment under the terms of this Agreement.

8.5 RIGHT TO INSPECT ALL WORK, EQUIPMENT AND MATERIALS. The Contractor shall permit the City or any authorized representative of the City's General Manager of Wichita Transit to inspect all work, equipment and materials with regard to the provision of service under this Agreement.

(A) These inspections shall be at any reasonable time during business hours; 8:00 a.m. to 5:00 p.m.

8.6 RIGHT TO OBSERVE OPERATIONS. The City reserves the right to observe operations by the Contractor pursuant to this Agreement at any reasonable time, i.e., maintenance, sensitivity training, loading and unloading eligible passengers, etc.

(A) If any observed operations are deemed defective by the City, the City shall notify the Contractor in writing of such defect.

(B) Upon receipt of a written notice of defect, the Contractor has 10 days to investigate the defect and provide reports to the City.

(C) The report shall include a copy of the City's notice of defect together with a written statement of the corrective action taken, and shall be subject to City approval.

(D) If corrective actions are satisfactory the City will advise the Contractor within 10 days. Otherwise the Contractor has an additional five (5) days to remedy the defect and failure to do so may be considered as a breach of this Agreement.

8.7 CONFIDENTIALITY. Both parties will comply with the provisions of State and Federal regulations in regard to confidentiality of eligible passenger records.

ARTICLE 9: METHOD OF BILLING AND PAYMENT

9.1 BILLING PROCEDURES. Vendor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City. After receipt of billing, payment shall be made as soon as procedures allow.

(A) MONTHLY BILLING. A monthly billing system will be used and all billing, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period.

(B) BILLING CONTENT. All billings from the Contractor shall include:

1) an itemization of each ride provided, including designation if the ride involved a person who used a wheelchair or similar mobility device,

2) the date of the ride,

3) passenger names,

4) total units of service provided for each eligible passenger,

5) amount of passenger fares collected pursuant to subsection 9.4(D) of this Agreement,

6) the number of rides provided between 6:00 AM and 10:00 AM and between 2:00 PM and 6:00 PM,

7) the number or rides provided under the Access to Jobs Program,

8) the number of rides provided under the New Freedom Program,

and

9) the number of rides provided to ambulatory persons and the number of rides provided to persons who use a wheelchair or similar mobility device.

Copies of daily vehicle manifests shall be submitted with monthly billing that indicate passenger pick up windows for eligible passengers and the actual time of vehicle arrival for passenger boarding. Trips provided to eligible passengers shall be highlighted on vehicle manifests to make them easily differentiated from trips provided to persons who have not been granted ADA paratransit eligibility. If the Contractor is providing rides under the Access to Jobs Program, those rides shall be totaled on monthly billing.

(C) BILLING PROCEDURE. The City will process the billings, verify the information / data submitted, and issue a check pursuant to the City's standard purchasing procedure.

(D) RATE OF REIMBURSEMENT. Transportation reimbursements will be made on a unit of service basis plus passenger fares pursuant to subsection 9.4(D) of this Agreement. The reimbursement per unit of service for trips provided pursuant to this Agreement shall be \$4.00 per ambulatory person and \$5.00 per person who use a wheelchair or similar mobility device.

(E) REVIEW OF REIMBURSEMENT RATES. The amount of reimbursement per unit of service will be reviewed during the last 6 months of 2006, and may be subject to revision starting January 1, 2007. Any change in the reimbursement rate must be agreed to in writing by all parties prior to implementation.

(F) NO-SHOW TRIPS AND MISSED TRIPS. No reimbursement shall be provided for trips involving passenger "no-shows" or "missed trips".

9.2 SUPPORT DOCUMENTATION. Billing shall be supported with documentation required by the City, including but not necessarily limited to, the documentation described above and in Article 8.

9.3 REIMBURSEMENT RESTRICTIONS. Payments shall be made to the Contractor only for items and services provided to support the stated purpose of this Agreement and when such items and services are specifically authorized by this Agreement. The City reserves the right to disallow reimbursement for any item or service if the City believes that such item or service was not provided to support the purpose of this Agreement or is not authorized by this Agreement.

9.4 SERVICE BY CONTRACTOR.

(A) GENERAL. Service is to be provided by the Contractor in a prompt and courteous manner. Passengers must be determined ADA paratransit eligible before the Contractor provides paratransit rides pursuant to this Agreement. Passengers are to be picked up within a 30-minute pick-up window and the unit of service or one-way trip shall not last longer than 90 minutes. If circumstances dictate, that the fore-mentioned conditions cannot be met, the Contractor shall make note of the incident and reference it as part of the on-time performance or trip length reports discussed in subsection 8.3(C). As discussed in subsection 8.3(A) of this Agreement, the Contractor is to provide the City a Complaints Report.

(B) BACK-UP SYSTEM. The Contractor must have a back-up system in place to ensure that eligible passengers are not stranded.

(C) ACCEPTANCE OF RIDES REFERRED BY THE CITY. When referred by the City, The Contractor agrees to accept subscription service ride requests by persons who are not the agency's client. This is provided that acceptance of the referral will not negatively impact the Contractor's ability to meet on-time performance or trip length standards for existing eligible passengers.

(D) COLLECTION OF FARE FROM ELIGIBLE PASSENGERS. As part of the reimbursement subsidy for providing the paratransit trip, the Contractor shall collect and retain the standard ADA paratransit fare from the eligible passenger at the time of providing the one-way trip or unit of service.

(E) ALCOHOL AND DRUG TESTING. The Contractor shall comply with the Federal Drug and Alcohol Regulations, as set forth in Appendix B of this Agreement. Pre-employment, post accident, and random tests shall be conducted for any and all safety sensitive Contractor positions that perform duties under the terms of this Agreement.

(F) VEHICLE SPECIFICATIONS. All vehicles used in service pursuant to this Agreement shall be equipped with a two way radio or other acceptable telecommunications device and shall at all times be maintained in the safest possible operating condition and shall be kept in clean and comfortable condition for the transportation of eligible passengers. Vehicles used to transport eligible passengers who use a wheelchair shall be equipped with an operable wheelchair lift or ramp. Use of vehicles equipped with wheelchair lifts or ramps will be compensated at the same rate as vehicles not equipped with such equipment. Compliance with vehicle specifications shall be subject to regular monitoring by the City or the designated representative of Wichita Transit.

(G) ADA COMPLIANCE. The Contractor must be in compliance with the Federal Americans with Disabilities Act (ADA) requirements.

ARTICLE 10: LICENSES AND PERMITS.

(A) The Contractor shall procure and maintain all permits, licenses, certifications, bonds and insurance required by federal, state or local authority for carrying out this Agreement.

(B) The Contractor shall maintain Workers Compensation Insurance in amounts not less than minimum statutory requirements.

(C) The Contractor shall notify the City immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may be the basis for immediate termination of this Agreement by the City.

ARTICLE 11: INSURANCE. The Contractor shall provide to the City a Certificate of Insurance evidencing Comprehensive General Liability, Professional Liability, and Comprehensive Automobile Liability coverage in the following minimum amounts:

- (A) Bodily Injury: \$500,000 Each Occurrence
- (B) Property Damage: \$500,000 Each Occurrence
- (C) Bodily Injury: \$500,000 Each Person
- (D) Bodily Injury:
 (owned, not owned, hired, renter or otherwise):
 - (1) Bodily Injury \$500,000 Each Accident
 - (2) Property Damage \$500,000 Each Accident
- (E) Workers Compensation: As statutorily required.

ARTICLE 12: SUBCONTRACTING.

(A) None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City.

(B) All approved subcontracts must conform to applicable requirements set forth in this Agreement.

(C) If the City consents to the use of subcontractors, the Contractor shall remain fully responsible for all obligations of this Agreement, including indemnification of the City for all actions by subcontractors.

ARTICLE 13: TERMINATION OF AGREEMENT.

13.1 TERMINATION FOR CAUSE. If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the terms, covenants, conditions or stipulations of this Agreement, the City has the right to terminate this Agreement by giving written termination notice to the Contractor. Such notice of termination shall specify the effective date of the termination.

In the event of termination, such information prepared by the Contractor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, at the option of the City, become the property of the City and be immediately turned over to the City. The Contractor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

In spite of the above, the Contractor shall not be relieved of liability to the City by virtue of any breach of this Agreement by the Contractor and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor are determined.

13.2 TERMINATION OF AGREEMENT ON OTHER GROUNDS. Either party, upon 30 days written notice, may terminate this Agreement in whole or in part. Written notice must state the effective date of the termination. A partial termination shall also be specified in writing and shall not be effective unless and until the other party has given its written concurrence.

13.3 EXPIRATION OF CONTRACT TERM. This Agreement shall extend until December 31, 2006. If the parties do not have a negotiated renewal Agreement completed on or before that date, this Agreement shall continue under the last agreed terms on a month-to-month basis.

ARTICLE 14: NOTIFICATION. Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, registered or certified mail (return receipt requested) or by means of telefacsimile or telecopier. Notices delivered in person or sent via telefacsimile or telecopier shall be effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be effective forty-eight hours after the date said notice is postmarked to the addressee.

Contractor: City of Wichita – Wichita Transit
Attn: General Manager
Address: 777 E. Waterman
Phone: (316) 352-4802
Fax: (316) 337-9287

Vendor: Contractor Name:
Attn:
Address:
Phone:
Fax:

ARTICLE 15: MISCELLANEOUS.

15.1 The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy provide by this Agreement, shall not be construed as a future waiver or relinquishment of such term, provision, option, right or remedy. A waiver by either party of any term or provision of this Agreement shall not be deemed to have been made unless submitted in writing and signed by the waiving party.

15.2 This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and to their permitted successors and assigns.

15.3 In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, the invalid provision shall automatically be considered amended so as to conform to all applicable legal requirements. If the invalidity cannot be cured by amendment, the invalid provision shall be considered stricken and deleted. In either case, the validity or enforceability of the remaining provision of this Agreement shall remain intact.

15.4 Both parties to this Agreement represent and agree that: (i) they have reviewed all aspects of this Agreement; (ii) they have been given the opportunity to review this Agreement with counsel; and (iii) they have carefully read and fully understand all provisions of this Agreement.

MONTHLY REPORTING FORM

Reporting Period: _____

ON-TIME PERFORMANCE AND TRIP LENGTH COMPLIANCE:

What was your on-time performance for the reporting period?

Early Arrival % On Time % Late Arrival %

What % of trips provided involved a client being on the van for more than 90 minutes?

PEAK HOUR RIDES:

How many rides were provided to eligible passengers during the following times?

6:00 AM and 10:00 AM 2:00 PM and 6:00 PM

WHEELCHAIR / AMBULATORY RIDES:

How many rides were provided to eligible passengers who use a wheelchair or similar mobility device and how many rides were provided to eligible passengers who are ambulatory.

TOTAL RIDES PROVIDED	NUMBER OF AMBULATORY RIDES	NUMBER OF WHEELCHAIR RIDES
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ACCESS TO JOBS RIDES:

How many rides were provided to eligible passengers under the Access to Jobs Program?

NEW FREEDOM RIDES:

How many rides were provided to eligible passengers under the New Freedom Program?

MISSED TRIP INFORMATION:

NAME OF PERSON	# OF MISSED TRIPS	MISSED TRIP DATES
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NO SHOW INFORMATION:

NAME OF PERSON	# OF NO-SHOWS	NO-SHOW DATES
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COMPLAINT REPORTING:

REASON FOR COMPLAINT	NUMBER OF INCIDENTS DURING REPORTING PERIOD
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Late Arrival

Early Arrival

Length of time on van

Driver rudeness

Other

Any Actions Taken on Complaints:

NAME OF CLIENT: _____

Nature of Complaint: _____

Actions taken: _____

APPENDIX B FEDERAL AND STATE REGULATIONS

U. S. FEDERAL

1. ENERGY CONSERVATION REQUIREMENTS

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

2. CLEAN WATER REQUIREMENTS

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

3. LOBBYING

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the (Purchaser).

4. ACCESS TO RECORDS

Contracts exceeding \$100,000.

1. The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor

also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser enters into a negotiated contract for other than a small purchase or under a simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

3. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

4. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

5. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

6. FTA does not require the inclusion of these requirements in subcontracts.

5. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

6. CLEAN AIR REQUIREMENTS

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

1. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the

clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. TERMINATION

Contracts with non-profit organizations and institutions of higher education in excess of \$100,000 and all other contracts in excess of \$10,000.

1. Termination for Convenience (General Provision) The (Purchaser) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Purchaser) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Purchaser), the Contractor will account for the same, and dispose of it in the manner the (Purchaser) directs.

2. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Purchaser) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Purchaser) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Purchaser), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. Opportunity to Cure (General Provision) The (Purchaser) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Purchaser)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Purchaser) setting forth the nature of said breach or default, (Purchaser) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Purchaser) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. Waiver of Remedies for any Breach In the event that (Purchaser) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract,

such waiver by (Purchaser) shall not limit (Purchaser)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

5. Termination for Convenience (Professional or Transit Service Contracts) The (Purchaser), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Purchaser) may terminate this contract for default. The (Purchaser) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Purchaser).

7. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Purchaser) may terminate this contract for default. The (Purchaser) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of (Purchaser)'s goods, the Contractor shall, upon direction of the (Purchaser), protect and preserve the goods until surrendered to the (Purchaser) or its agent. The Contractor and (Purchaser) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Purchaser).

8. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Purchaser) may terminate this contract for default. The (Purchaser) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the (Purchaser) may take over the work and complete it by contract or otherwise, and may take

possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the (Purchaser) resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the (Purchaser) in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

A. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the (Purchaser), acts of another Contractor in the performance of a contract with the (Purchaser), epidemics, quarantine restrictions, strikes, freight embargoes; and

B. The contractor, within [10] days from the beginning of any delay, notifies the (Purchaser) in writing of the causes of delay. If in the judgment of the (Purchaser), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Purchaser) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the (Purchaser).

9. Termination for Convenience or Default (Architect and Engineering)

The (Purchaser) may terminate this contract in whole or in part, for the (Purchaser)'s convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Purchaser) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the (Purchaser), the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the (Purchaser) may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the (Purchaser).

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Purchaser).

10. Termination for Convenience or Default (Cost-Type Contracts) The (Purchaser) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Purchaser) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Purchaser), or property supplied to the Contractor by the (Purchaser). If the termination is for default, the (Purchaser) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Purchaser) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Purchaser), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Purchaser) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Purchaser), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination of convenience.

10. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

Certification Regarding Debarment, Suspension, and Other Responsibilities Matters
Lower Tier Covered Transactions (Third Party Contracts over \$100,000).

Instructions for Certification

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, (Purchaser) may pursue available remedies, including suspension and/or debarment.

2. The prospective lower tier participant shall provide immediate written notice to (Purchaser) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the

Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact (Purchaser) for assistance in obtaining a copy of those regulations.

4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by (Purchaser).

5. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

6. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

7. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, (Purchaser) may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"

1. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

11. CIVIL RIGHTS REQUIREMENTS

The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

b. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. BREACHES AND DISPUTE RESOLUTION

Contracts exceeding \$100,000.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Purchaser)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Purchaser), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Purchaser) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Purchaser) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Purchaser), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. DISADVANTAGES BUSINESS ENTERPRISES (DBE)

1. The Federal Fiscal Year goal has been set by the (Purchaser) in an attempt to match projected procurements with available qualified disadvantaged businesses. The (Purchaser)'s goals for budgeted service contracts, bus parts, and other materials and supplies for Disadvantaged Business Enterprises have been established by the (Purchaser) as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by

Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specified DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, the (Purchaser) may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

This section is being developed to reflect the new rule in 49 CFR Part 26.

a. Policy - It is the policy of the Department of Transportation and the City of Wichita / Wichita Transit that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106c of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA), shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106c of the STURAA of 1987, apply to this contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106c of the STURRA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the (Purchaser) to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the (Purchaser)'s procurement activities are encouraged.

b. DBE Obligation – The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

c. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the (Purchaser) may declare the contractor noncompliance and in breach of contract.

d. The contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the (Purchaser)'s DBE program. These records and documents will be made available at reasonable times and places for inspection by an authorized representative of the (Purchaser) and will be submitted to the state upon request.

e. The (Purchaser) will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of Minority Assistance Agencies
- Holding bid conferences to emphasize requirements

iv. DBE Program Definitions, as used in the contract:

v. Disadvantage business “means a small business concern”:

vi. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

vii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

viii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

j ix. Whose management and daily business operations are controlled by one or more women individuals who own it.

x. “Small business concern” means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c)) Determinations of Business Size.

xi. “Socially and economically disadvantaged individuals” means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

xii. “Black Americans”, which includes persons having origins in any of the Black racial groups of Africa;

xiii. “Hispanic Americans”, which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

xiv. “Native Americans”, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

xv. “Asian-Pacific Americans”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

xvi. “Asian-Indian Americans”, which includes persons whose origins are from India, Pakistan, and Bangladesh.

14. STATE AND LOCAL LAW DISCLAIMER

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the (Purchaser)’s procurement documents, the grantees should consult with their local attorney.

15. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (Purchaser) requests which would cause the (Purchaser) to be in violation of the FTA terms and conditions.

16. FLY AMERICA

Applies ONLY to contracts involving international air transportation of persons or material.

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S. flag carriers to extend services by U.S. flag carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974f. as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations “Use of United States Flag Air Carriers.” 41 C.F.R. §§ 301.131 through 301.143.

17. ENVIRONMENTAL PROTECTION

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. consistent with Executive Order No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the

National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; And joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

18. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES (ADA)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. U.S. GSA regulations, "Accommodations for the Physically Handicapped" 41 C.F.R. Subpart 101-19;
7. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
10. Any implementing requirements FTA may issue.

19. NOTIFICATION OF FEDERAL PARTICIPATION

Applies ONLY to contracts for goods and services, including construction, valued at over \$500,000.

In the announcement of any third party contract award for goods or services (including construction services) having aggregate value of \$500,000 or more, the Contractor agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to the expressed amount of that Federal assistance as a percentage of that total cost of that third party contract.

STATE OF KANSAS

A. AGREEMENT WITH KANSAS LAW.

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. DISCLAIMER OF LIABILITY.

Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any Contractor beyond that for any liability or damage except for those occasioned by the acts or omissions of its own employees, and then only up to the limits of liability designated under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

C. RESPONSIBILITY FOR TAXES.

Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a Contractor for, any federal, state or local taxes that may be imposed or levied upon the subject matter of this contract.

Agenda Item No. 9a.

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1010

TO: Mayor and City Council Members

SUBJECT: Change Order: Central Corridor Railroad Improvement (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Change Order.

Background: On March 8, 2005, the City Council approved a construction contract with Dondlinger & Sons, Inc. to construct Central Corridor Railroad Improvements. A number of work items have developed since the project was designed and let that should be addressed by a change order:

Reimbursement for lost salvage because existing rails that were to have been salvaged and retained by the contractor are needed for reuse by the Great Plains Railroad Museum. \$25,306

Ballast needed for the Railroad Museum that was to have been delivered by BNSF rail cars has been made impractical because of the construction sequencing and confined work space. Ballast salvaged from a previous railroad project has been made available by the contractor for this project. \$22,092

A ballast screen system is needed to prevent ballast from entering area drainage inlets. \$9,600

Additional storm sewer and sanitary sewer relocation and reconstruction is needed. \$1,940

Analysis: A Change Order has been prepared for the additional work. Funding is available within the project budget.

Financial Considerations: The cost of the additional work is \$58,938, with the total paid by a combination of City-at-Large funds, Federal grants administered by the Kansas Department of Transportation and railroad funds. The original contract is \$57,444,085. This Change Order plus a previous change order represent .39% of the original contract amount.

Legal Considerations: The Law Department has approved the Change Order as to legal form. This Change Order plus previous change orders is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the Change Order and authorize the necessary signatures.

November 2, 2004

PUBLIC WORKS-ENGINEERING CHANGE ORDER

To: Cornejo & Sons, Inc. Project: Rock Rd. from 21st N. to 29th N.

Change Order No.: 4 Project No.: 87N-0197-01 / 472-83889

Purchase Order No.: 400706 OCA No.: 706874

CHARGE TO OCA No.: 706874 PPN: 204340

Please perform the following extra work at a cost not to exceed \$71,967.92

Over-Run:

19 - Retaining Wall 7.47 m @ \$151.00 / m = \$1,127.97

Add:

Fescue Sod 9,000 sm @ \$2.9265 / sm = \$26,338.50

4" Conc. median surfacing (Northpark Apts.) 1 LS @ \$153.00 = \$153.00

Irrigation repairs for new sidewalk 1 LS @ \$23,897.50 = \$23,897.50

4" Irrigation sleeve in median at 11+480 1 LS @ \$1,380.00 = \$1,380.00

Top Soil for Medians 455 CM @ \$32.00 = \$14,560.00

Thermal Crack Repair 106.14 sm @ \$42.50 = \$4,510.95

21 Calendar Days related to utility conflicts (Revised Completion Date of November 30, 2004)

28 Working Days beyond November 30, 2004 for completion of sidewalk and site restoration work.

TOTAL \$71,967.92

Recommended By: Approved:

_____ Larry Schaller, P.E. Construction Engineer	_____ Date	_____ Jim Armour, P.E. Acting City Engineer	_____ Date
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Approved: Approved:

_____ Contractor	_____ Date	_____ Chris Carrier, P.E. Acting Director of Public Works	_____ Date
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Approved as to Form: By Order of the City Council:

_____ Gary Rebenstorf Director of Law	_____ Date	_____ Carlos Mayans Mayor	_____ Date
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Approved:

Attest: _____

_____ KDOT Metro Engineer	_____ Date	_____ City Clerk
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Agenda Item No. 9b

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1011

TO: Mayor and City Council Members

SUBJECT: Change Order: Sand Plum Addition Improvements (West of Webb, at 43rd St. North) (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Change Order.

Background: On February 15, 2005, the City Council approved a contract with Cornejo & Sons, Inc for paving improvements in Sand Plum Addition. It has since been determined that additional site grading is necessary to direct storm water runoff away from adjacent properties. In addition, a storm sewer manhole needs to be lowered.

Analysis: A Change Order has been prepared for the cost of the additional work. Funding is available within the project budget.

Financial Considerations: The cost of the additional work is \$15,908 with the total paid by special assessments. The original contract amount is \$149,468. This Change Order represents 10.64% of the original contract amount.

Legal Considerations: The Law Department has approved the Change Order as to legal form. The Change Order amount is within 25% of the construction contract cost limit set by the City Council policy.

Recommendation/Action: It is recommended that the City Council approve the Change Order and authorize the necessary signatures.

November 24, 2004
PUBLIC WORKS-ENGINEERING CHANGE ORDER

To: Nowak Construction Co., Inc. Project: Lateral 91, Main 1, Southwest Interceptor Sewer to serve Hidden Glen Addition

Change Order No.: 1 Project No.: 468-83484

Purchase Order No.: 401004 OCA No.: 744064

CHARGE TO OCA No.: 744064 - \$16,500.00 PPN: 480752

620421 - \$10,000.00

706877 - \$8,500.00

Please perform the following extra work at a cost not to exceed \$35,000.00

ADD:

Replace defective stub	1 LS	@	35,000.00	=	35,000.00
TOTAL			\$35,000.00		

Recommended By: Approved:

_____ Lawrence Schaller, P.E. Construction Engineer	_____ Date	_____ James Armour, P.E. Acting City Engineer	_____ Date	_____
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Approved: Approved:

_____ Contractor	_____ Date	_____ Chris Carrier, P.E. Acting Director of Public Works	_____ Date	_____
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Approved as to Form: By Order of the City Council:

_____ Gary Rebenstorf Director of Law	_____ Date	_____ Carlos Mayans Mayor	_____ Date	_____
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Attest: _____
City Clerk

Agenda Item No. 10

CITY OF WICHITA
City Council Meeting
November 8, 2005

Agenda Report No. 05-1012

TO: Mayor and City Council Members

SUBJECT: Acquisition of Temporary Easement for Integrated Local Water Supply Plan

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On August 3, 1993 the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000 City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project which includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River, the transfer to and storage of captured water in the aquifer, and the recovery and use of this water to meet future demands for the City of Wichita.

Analysis: Twenty-two sites were identified as necessary for the location of a twenty-four inch water line to serve recharge/recovery wells, recharge well, or recharge basins. Fourteen of the twenty-two have been secured. One additional landowner (Koehn) of the identified sites have agreed to provide a temporary construction easements to the City of Wichita for a respective \$1,390, or the equivalent to \$1,500 per acre.

Financial Considerations: A budget of \$1,590 is requested; this includes \$1,390 for acquisition and \$200 for title work, title insurance and closing costs. Funding for this project is included in the CIP in W-549, Water Supply Plan Phase III, which has an available funding of over \$7.6 million

Legal Considerations: The Law Department has approved the contracts as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the permanent easement; and 3) Authorize all necessary signatures.

Agenda Item No. 12

CITY OF WICHITA
City Council Meeting
November 8, 2005

Agenda Report No. 05-1013

TO: Mayor and City Council Members

SUBJECT: Transportation Enhancement Application – Brooks/Buckner Bike Trail Addition
(District I)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

Recommendation: Approve the grant application.

Background: Recently, the newest addition to the K-96 Bike trail was completed for an area reaching from Oliver to Hillside and into Grove Park. Located nearby the new pathway are adjacent school sites; Brooks Middle School and Buckner Elementary school. The Park and Recreation Department, in cooperation with USD 259, wishes to create a trail connection to the new pathway. This trail link can play an important role in developing outreach programming for environmental education within the school curriculums, as well as increase awareness for healthy behavior in reducing the national epidemic of childhood obesity.

Analysis: The current path creates an open loop which follows Chisholm Creek. The proposed trail link will close this loop, allowing direct pathway access for youth in the local communities who wish to commute by bicycle. This pathway connection will also provide a direct link for local field trips without having to backtrack around the loop to return to campus. This new path extension and path loop provides economies of time promoting exercise activities and scientific awareness through nature field studies with the natural flora and fauna found around the Chisholm Creek Greenway. It will also provide additional contact with the real, natural world, containing the next century's challenges.

Financial Considerations: The cost of the pathway is estimated to be \$93,340 in 2008 dollars. If the application were granted to the City, the City would be responsible to fund a total a local match of \$28,002, or 30% of the total project amount. The City will not know if the application has been awarded funding until May 2008. A total of \$400,000 has been allocated each year in the CIP to support Transportation Enhancement projects.

Legal Considerations: All projects must be approved by the Wichita Area Metropolitan Planning Organization (WAMPO) for conformity with long-range transportation plans. The Wichita City Council must also approve the filing of the application through a resolution that also states that the City accepts responsibility for coordination of these projects and is committed to funding 30% of the total project cost as a local match contribution.

Recommendation/Action: It is recommended that the City Council approve the resolution of support and authorization for application submittal to KDOT.

Agenda Item No. 13

CITY OF WICHITA
City Council Meeting
November 8, 2005

Agenda Report No. 05-1014

TO: Mayor and City Council Members

SUBJECT: Transportation Enhancement Application: Scenic & Environmental – Rest Station and Beautification project: Bluff Street to Fountain Street (District I)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

Recommendation: Approve the grant application.

Background: The K-96 Bike trail, completed in 2005, is located directly south of the K-96 Highway and extends from Oliver to Grove Park. The citizens of the Northeast Heights Neighborhood Association (NHNA) wish to partner with the City of Wichita to develop a rest station within their neighborhood to be located along the new trail between Bluff and Fountain Streets. This section of the K-96 Bike Path was completed in 2005 with no increased scenic area component to beautify the natural area of the path. The NHNA proposes to develop a rest area for pedestrians and cyclists and will include a sitting area, drinking fountain, and landscaping using native trees, shrubs, wildflowers and grasses.

Analysis: The scenic enhancement is important to the community, encouraging increased usage by local neighborhood residents in the Northeast Heights Neighborhood Association and visitors to the area as a whole. The rest station will provide a place for quiet enjoyment of nature, conversation, relaxation, and a social area for walkers and cyclists that encourages additional exercise use in the community. It will also promote the use of native landscaping principles that will serve to be environmentally beneficial.

Financial Considerations: The cost of the rest station is estimated to cost a total of \$111,760 in 2008 dollars. If the application were granted to the City, the City would be responsible to fund a total local match of \$33,528, or 30% of the total project amount. The City will not know if the application has been awarded funding until May 2008. A total of \$400,000 has been allocated each year in the CIP to support Transportation Enhancement projects. Minimal additional operating costs of less than \$1,000 per year will be incurred for trash service and maintenance of improvements.

Legal Considerations: All projects must be approved by the Wichita Area Metropolitan Planning Organization (WAMPO) for conformity with long-range transportation plans. The Wichita City Council must also approve the filing of the application through a resolution that also states that the City accepts responsibility for coordination of these projects and is committed to funding 30% of the total project cost as a local match contribution.

Recommendation/Action: It is recommended that the City Council adopt the resolution of support and authorization for application submittal to KDOT.

Agenda Item No. 14

City of Wichita
City Council Meeting

Agenda Report No. 05-1015

TO: Mayor and City Council

SUBJECT: Budget Adjustment

INITIATED BY: Wichita Transit

AGENDA: Consent Agenda

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Recommendation: Approve the Budget Adjustment request to activate contingency funds to support fuel costs.

Background: With the continuing increases in fuel costs, it is necessary to activate the contingency funds dedicated for those activities. Current local fuel budgets have been depleted for both diesel fuel and for gasoline. KDOT funding has been secured for purchasing fuel through the end of the year once the local fuel budgets have been exhausted.

Analysis: Fuel price increases have resulted in our local transit fund budget being able to cover less than three quarters of the year's operating requirements. KDOT funding has been used to cover the remaining fuel costs for the past three years.

KDOT funds are intended to supplement our local budgets and cannot be used to substitute them.

Financial Considerations: Activating the diesel fuel contingency would result in increasing the diesel fuel budget from \$352,960 to \$395,960 (a \$43,000 increase). The gasoline budget would increase from \$133,000 to \$156,430 (a \$23,430 increase).

Legal Consideration: Budget Adjustments over \$10,000 must have City Council approval.

Recommendations/Actions: It is recommended that the City Council approve the Budget Adjustment request to activate the contingency funds for the purchase of diesel fuel and gasoline.

Agenda Item NO. 15.

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1016

TO: Mayor and City Council

SUBJECT: Security Enhancements

INITIATED BY: Water & Sewer Department

AGENDA: Consent

Recommendation: Approve the expenditure for security enhancements.

Background: The security enhancement project is included in the ten-year Capital Improvement Program and is intended to provide enhancements for the Water Utility. During the process of conducting a Vulnerability Assessment for the Water & Sewer Department and a Buffer Zone Protection Plan for the water treatment plant, needed enhancements were identified.

Analysis: Primary requirements include fencing along the buffer zone for the water treatment plant and Hess pump station. Recommendations include electronic security improvements at the Water Utility facilities and providing backup power generation capability at key Water Utility facilities.

Financial Considerations: Water System Security Improvements (CIP W-903) has a budget of \$6 million in 2005. It will be funded from future revenue bonds and/or Water Utility cash reserves.

Legal Considerations: The Resolution has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council: 1) approve the security enhancements for 2005; 2) adopt the Resolution; and 3) authorize the necessary signatures.

Agenda Item No. 16

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1017

TO: Mayor and City Council

SUBJECT: 20-inch Water Main in 135th West from Central to 1/3 mile South of Central (District V)

INITIATED BY: Water & Sewer Department

AGENDA: Consent

Recommendation: Approve the expenditure.

Background: The 1999 Water Master Plan identified potential water pressure problems in portions of the west Wichita water distribution system, and in growth areas in west Sedgwick County identified by the Metropolitan Area Planning Department.

Analysis: On April 8, 2003, the City Council approved a Water Master Plan Update. In the process of updating the water distribution water model and analyzing the water distribution system, including the latest growth predictions, the Water Master Plan recommended a 20-inch water main to be located in 135th Street West, from Central Avenue to 1/3 mile south of Central Avenue. The water main will also be part of a water system loop in the west portion of the City and will allow for future development of the area.

Financial Considerations: The Capital Improvement Program CIP W-864 is included in the 2006 approved CIP. The budget for the project is \$150,000 and will be funded from Water Utility revenues and reserves, and/or a future revenue bond issue.

Legal Considerations: The Law Department has approved the Resolution as to form.

Recommendations/Actions: It is recommended that the City Council approve the expenditure and adopt the Resolution.

. Agenda Item No. 17

City of Wichita
City Council Meeting
November 8, 2005
Agenda Report No. 05-1018

TO: Mayor and City Council

SUBJECT: Contract with HUMATEC

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize contract amendment for additional consultant services.

Background: The City has retained the engineering firm of NS Ventures, Ltd. d/b/a Humatec, through its employees, William N. Nelson, Stephan P. Buckley and Mark A. Hedebrecht, to provide professional advice and expert witness services for the city in pending civil rights litigation involving the Wichita Police Department.

Analysis: The current contract provided for compensation not to exceed \$20,000. The additional amount is necessary for continued professional examination of the engineering aspects of the case, in preparation for trial and for services related to testimony as expert witnesses. This will be the first amendment to the contract. The Law Department recommends acceptance of the contract. The additional sums are necessary for the representation in city litigation matters and are reasonable in amount.

Financial Considerations: Funding for this contract is from the Tort Claims Fund.

Legal Considerations: The Amendment to the Agreement has been prepared and approved as to form by the Department of Law.

Recommendations/Actions: Approve the amendment to the agreement between the City and NS Ventures, Ltd. d/b/a Humatec to authorize payment of an additional sum of \$25,000 for the provision of additional consulting services in 2005 and 2006, together with any necessary fund transfers and authorize the Mayor to execute the contract.

Agenda Item No. 19

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1019

TO: Mayor and City Council

SUBJECT: Review of Angle Parking: Eaton Block

INITIATED BY: City Manager's Office

AGENDA: Old Business

Recommendation: Permanently approve angle parking in the 500 block of East Douglas.

Background: MetroPlains Development, the Eaton Place developer, requested that the City implement one-hour restricted angle parking along the south side of the 500 block of East Douglas Avenue in 2001. The purpose was to provide more parking spaces than were currently available with parallel parking to serve commercial businesses located in the renovated Eaton Hotel block. The angle parking configuration produced 22 spaces in lieu of the 9 parallel stalls. The City Council approved MetroPlains' request on a six-month trial basis beginning on January 2001. The Council's action annually in 2001, 2002, 2003 and 2004 was to continue angle parking in this block (south side) another 12-months to fully evaluate the impact of having the commercial/retail space fully leased and served, OR, until such time as additional parking in this area becomes available.

Analysis: Ninety-four percent of the commercial space in the development is currently leased. This includes the Eaton Hotel lobby and ballroom which are leased to Larkspur for banquet/event facilities. Additional leases are being negotiated for tenant occupancy of the vacant space in the near future. According to MetroPlains Development, access to these parking spaces continues to be critical both as a leasing tool and a service to customers of the commercial spaces in Eaton Place. This amenity, which is usually only possible in small centers such as Eaton Place, is a requirement of prospective tenants.

The Eaton Place Manager has indicated that the restricted angle parking is being well enforced by the Wichita Ambassadors. This is keeping the spaces turning over on a regular basis and available for customers. This strict enforcement is forcing the Eaton Place residential tenants who were inclined to take advantage of the convenient free parking spaces to use parking in the lot/garage which was constructed for residential tenant parking south of the Eaton block.

According to the Wichita Police Department, there has been no significant change in the number of traffic accidents in the 500 block of East Douglas Avenue that can be directly attributed to the angle parking. The area analyzed included the 400 and 500 blocks of East Douglas including the intersections of Douglas/Emporia and Douglas/St. Francis. The 400 block was included in the analysis as this is the block where eastbound traffic merges into the center lane in order to avoid vehicles parked in the angle parking stalls. Accident summaries were compiled for the years 1998 through 2005. Total accidents in these areas for 1998 were 24; 1999 were 15; 2000 were 11 (no parallel parking was available due to Eaton block construction); for 2001 were 20; 2002 were seven; 2003 were four. Total accidents in 2004 were 19 and 2005 year to date accidents have been 17.

If the Council chooses to permanently approve the angle parking in this area, staff will continue to monitor accidents. If an increase in accidents occurs and is attributable to the angle parking, staff will return the item to the City Council for additional consideration.

Financial Considerations: None.

Legal Considerations: The City Council has the legal authority to determine parking configurations in the city.

Recommendation/Actions: It is recommended that the one-hour restricted angle parking on the south side of Douglas be permanently approved.

Agenda Item No. 20

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1020

TO:	Mayor and Council Members
SUBJECT:	Extended Special Assessment Financing Pilot Project
INITIATED BY:	City Manager's Office
AGENDA:	Old Business

Recommendation: Permanently approve the option to use 20-year special assessment financing for developments with extraordinary development costs.

Background: Two years ago, the Wichita Area Builders Association (WABA) requested the City Council consider extending the bond terms for special assessment debt from its current fifteen (15) years to twenty (20) years, matching a proposed change in the collection of special assessments from property owners. The goal of WABA was an extension of the term to lower monthly/annual special assessment payments especially for entry-level subdivisions with unique and extraordinary development costs and as incentives for existing neighborhoods without standard municipal improvements (i.e. paving, water/sewers, drainage, etc.).

The City Council approved a one-year extended special assessment pilot project in November 2003 and approved a subsequent one-year extension in November 2004. To date, in 2005, the City hasn't received any applications for projects that meet the program criteria.

Each application submitted for the extended 20-year special assessment financing project is reviewed by a permanent committee appointed by the City Council. The committee includes two City Council members, city staff, and representatives of the development community.

Analysis: To date this year, the City received three applications for 20 year special assessment financing. None of the special assessments exceeded the threshold of acceptable special assessment costs for the price range of the houses in the subdivisions.

Mortgage rates, which are still favorable, are increasing as historically has been the case with the cyclical nature of the real estate market. In addition, due to the impact of the hurricanes on the construction industry, materials costs have increased and the availability and costs are unpredictable. For that reason, staff, in concurrence with WABA, recommends that the City Council permanently approve this financing option for residential subdivisions. This will ensure that the marketability of new entry level homes won't be compromised. Likewise, the 20-year financing structure will be in place for infrastructure projects in existing and infill projects.

Even though the program may be permanently implemented, there are no assurances that developers will be guaranteed the 20-year vs. 15 year special assessments. Use of the extended term financing is contingent upon the project meeting the eligibility criteria, being approved by the review committee and there being a sufficient number of projects in the bond sale for 20 year financing to ensure that the bonds will be sold.

Financial Considerations: Special assessment debt is a component of City General Obligation debt repaid by taxing specific benefit districts. Special assessment debt (meeting the criteria) will be spread over twenty years to property owners and will be payable at the same time as property taxes. The effect of extending the term will increase the aggregate amount of debt (new debt will be added faster than old debt will be retired) and, as can be seen from the most recent bond sale, will increase the interest cost to both property owners and the City of Wichita (longer maturity debt typically carries a higher interest rate).

Legal Considerations: K.S.A. 12-6a10 permits the issuance of special assessment bonds for a 20-year period. The governing body has the authority to permit the issuance of 20-year bonds and may establish a policy establishing criteria for determining when such bonds shall be issued.

Recommendation/Action: It is recommended that the City Council permanently approve the 20-year special assessment program so that in the future as interest rates and construction prices escalate, this tool will be available to ensure the affordability of homes especially for first time homebuyers.

Agenda Item No. 21

City of Wichita
City Council Meeting

November 8, 2005

Agenda Report No. 05-1021

TO: Mayor and City Council Members

SUBJECT: Continuation of Public Hearing on proposed assessment for Water Distribution System to serve part of Nice's Addition (1439 N. Joann) (District VI)

INITIATED BY: Department of Public Works
Department of Water and Sewer

AGENDA: Unfinished Business

Recommendation: Apply special assessment for a water line to the property.

Background: Scott McColm appeared before the City Council on October 18, 2005 to protest the assessment of a water main extension for his property at 1439 N. Joann. Mr. McColm claims that the Department of Water and Sewer Staff initially told him that there was water service available to the property. Later he found out water was not extended across that property. Mr. McColm claims Staff gave him an estimate for the work of \$900 to \$1,000. The actual assessment came to \$2,466. Mr. McColm wants the City Council to direct that the Water and Sewer Department bear the cost of the water line installation due to the error in the availability of water to the lot or that the assessment amount not exceed the original estimate. The following are facts related to this issue:

- Mr. McColm acquired the property from Lawrence Turner on January 12, 2004.
- 1439 N. Joann was created by a lot split of Lot 11 of Nice's Addition (1452 N High). The lot split applicant was Lawrence Turner. The lot split was approved on February 20, 2004.
- One of several conditions of the lot split approval was a petition for the extension of water.
- Mr. McColm signed a petition for the water service extension in the amount of \$3,500 on February 13, 2004.
- The building permit for construction of the house on this lot was issued on December 8, 2004 at which time the water tap and plant equity fees were paid.
- The work to install the water line was done by Water and Sewer Department Staff at a cost for labor, overhead, equipment and materials of \$2,221.40. An additional amount of approximately \$244.60 in the assessed amount is for administrative, legal publication, abstract and financing charges. Public Works Engineering did not charge for engineering or inspection services on this project.
- In lieu of assessment amount at the time Mr. McColm first inquired about cost was \$26.50/front foot. For a lot with 70 feet of frontage, the in lieu of amount would have been \$1,855. Had the water line existed, as Mr. McColm said he was told, he would have been required to pay this amount at the time of connection.

- In lieu of assessment amounts are payable in cash at the time water service is requested and cannot be financed by special assessments.
- Special assessments are financed at the City's interest rate for tax-exempt debt instruments over a period of 15 years. The current SA interest rate is 3.86294%. The monthly payments into an escrow account for the \$2,466 assessment would be approximately \$18.07.
- Mr. McColm paid approximately \$0.51/sq ft for the lot. Adding the cost of the water line to the sales price for the lot would make Mr. McColm's cost approximately \$0.82/sq ft. Lots in West and Northwest Wichita with water service in place are selling for about \$0.84/sq ft not including the cost of the water line.

Analysis: The "error" as to whether or not water service was available to the property is likely a matter of interpretation. The City's computer records show a water line immediately adjacent to this property before the extension. Had the water line actually been in place, Mr. McColm would have been asked to pay a fee in lieu of assessment for the water line. Mr. McColm's property value benefits from the water line that is now in place. The City incurred an expense of \$2,466 to place the water line there for the benefit of Mr. McColm's property. If Mr. McColm does not pay for the water line that benefits his property, then the cost is borne by all other ratepayers who do not benefit from the existence of this water line.

Financial Considerations: Staff has identified the following options for the City Council to consider:

1. Uphold the special assessment of \$2,466 to 1439 N. Joann.
2. Cancel the special assessment to 1439 N. Joann and direct staff to pay the cost of the water line extension from utility cash.
3. Offer Mr. McColm the option of paying a lump sum in lieu of assessment of \$1,855 as a compromise.

Not assessing the cost of the water line to the benefitting property shifts the burden of the cost to customers who do not benefit from the improvement.

Legal: State Statutes provide the City Council authority to lower or eliminate the special assessment.

Recommended Action: It is recommended that the City Council uphold the special assessment in the amount of \$2,466 to 1439 N. Joann.

Agenda Item No. 22

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1022

TO: Mayor and City Council

SUBJECT: Public Hearing and Issuance of Taxable Industrial Revenue Bonds
(The Boeing Company) (District III)

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Place on first reading the Bond Ordinance, approving the Bond Documents and issuance of Bonds for the benefit of The Boeing Company.

Background: Since 1979, the City of Wichita has approved over \$3.4 billion in Industrial Revenue bond financing, in conjunction with ad valorem tax exemptions, for manufacturing facilities operated by The Boeing Company. Following the sale of a substantial portion of manufacturing assets earlier this year, Boeing has nevertheless retained and continues to operate significant Wichita area manufacturing facilities, and continues to hold a letter of intent approved November 9, 1999 and as extended for five years on July 13, 2004. Boeing is now requesting the issuance of City of Wichita Taxable Industrial Revenue Bonds in an amount not-to-exceed \$29 million, under the authority of that Letter of Intent.

Analysis: Boeing Wichita, located in Sedgwick County, Kansas, with approximately 3,900 employees and an annual payroll of \$320 million, is engaged in engineering and manufacturing support of Boeing and military aircraft modification. All Boeing Wichita sales are exported out of the state of Kansas.

Bond proceeds will be used for acquisition of new, advanced manufacturing equipment and enhancement of existing facilities. Some of the planned equipment purchases include flight data systems, avionics lab equipment and a calibration computer. Boeing advises the new equipment will have no adverse effect on Wichita's ambient air quality.

Acquisition of advanced technologies and the construction of new facilities is required for Boeing Wichita to compete for military production, in addition to sustaining on-going production programs. In these markedly different and difficult times, the bond proceeds will have an impact in stabilizing employment and will substantially assist with helping Boeing Wichita retain many critical professional, technical, and highly skilled employees. The economic impact of planned upgrades and expansion has a direct cascade effect on engineering and architect firms, machine shops, and material providers in Wichita.

The firm of Kutak Rock LLP will serve as bond counsel in the transaction. The Boeing Company will purchase the Bonds, as a result of which, there is no need for an underwriter. Boeing Wichita has agreed to comply with the Standard Conditions contained in the City's IRB Policy.

Financial Considerations: The Boeing Company agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. The Boeing Company qualifies for a ten-year 100% property tax exemption on the bond financed property on the basis of membership in the local aircraft manufacturing community, level of capital investment, and 100% out-of-state sales exportation. Consistent with the intent of the City Council in its action approving the November 9, 1999 letter of intent and as extended for five years on July 13, 2004, the ten-year period of exemption is to apply without a review by the Council at the five-year point. The IRB Lease document to be approved by the Bond Ordinance has been drafted accordingly. This is consistent with all discussion had at the public hearing on the item, although references to a five-year review were inadvertently included in the November 9, 1999 minutes from a superseded agenda report.

Legal Considerations: The City Attorney's Office has reviewed and approved the Bond Ordinance and principal financing documents.

Recommendations/Actions: It is recommended that City Council close the public hearing and approve first reading of the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Taxable Industrial Revenue Bonds in an amount not-to-exceed \$29 million.

Agenda Item 23

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1023

TO: Mayor and City Council

SUBJECT: Public Hearing and Issuance of Taxable Industrial Revenue Bonds
(Spirit AeroSystems, Inc.) (District III)

INITIATED BY: Law Department

AGENDA: New Business

Recommendations: Place on first reading the Bond Ordinance, approving the Bond Documents and issuance of Bonds for the benefit of Spirit AeroSystems, Inc.

Background: On May 17, 2005, the City Council approved a five-year letter of intent for issuance of up to \$1 billion in Industrial Revenue Bonds to finance facilities for the benefit of Mid-Western Aircraft Systems, Inc. (now known as Spirit AeroSystems, Inc.), in the vicinity of 3801 S. Oliver. The May 17 action also included support for a ten-year period of property tax

abatement and authorization for City staff to apply for sales tax exemption on the acquisition of the financed assets, all subject to the incentive recapture provisions of the City's current public incentives policy. Spirit AeroSystems, Inc. now desires the City to proceed with issuance of the first \$80 million in bonds authorized under the letter of intent.

Analysis: Bond proceeds will be used to finance the ongoing modernization and expansion of the commercial aircraft manufacturing facilities Spirit AeroSystems, Inc. acquired from The Boeing Company in June of this year . The proposed expansion project and improvements will enable Spirit AeroSystems, Inc. to continue existing commercial aircraft part production programs and services, to take advantage of new technology and to compete for new aircraft part manufacturing business. Although Spirit AeroSystems, Inc. will continue to manufacture major parts systems for a variety of Boeing jetliners, including the new Boeing 787, Spirit AeroSystems, Inc. also plans to expand its operations and customer base by marketing its aircraft parts manufacturing services to other makers of commercial aircraft, as well as corporate and military aircraft. Employment levels will be determined by production requirements. Average salaries are projected to be around \$50,000 per year.

Spirit AeroSystems, Inc. intends to purchase the bonds itself, through direct placement, and the bonds will not be reoffered for sale to the public. Kutak Rock LLP of Omaha, Nebraska, engaged by Spirit AeroSystems, Inc., will serve as Bond Counsel in the transaction. Spirit AeroSystems, Inc. has agreed to comply with all conditions of the letter of intent.

Financial Considerations: Spirit AeroSystems, Inc. agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. The bond financed property will be eligible for sales tax exemption and property tax exemption for a term of ten years, subject to fulfillment of the conditions of the City's public incentives policy.

Legal Considerations: The City Attorney's Office has reviewed and approved the Ordinance as to form and will review and approve all final documents prior to issuance of the bonds.

Recommendations/Actions: It is recommended that City Council close the public hearing and approve first reading of the Bond Ordinance authorizing the execution and delivery of documents for the issuance of Taxable Industrial Revenue Bonds in an amount not-to-exceed \$80 million.

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN SPIRIT AEROSYSTEMS, INC. AND THE CITY OF WICHITA, KANSAS; APPROVING AND AUTHORIZING THE EXECUTION OF AN INDENTURE OF TRUST BETWEEN SAID CITY AND THE BANK OF NEW YORK TRUST COMPANY, N.A.; PLEDGING CERTAIN PAYMENTS UNDER SAID LEASE AGREEMENT AND MONEYS AND SECURITIES HELD BY THE TRUSTEE UNDER THE TERMS OF SAID INDENTURE OF TRUST; AUTHORIZING AND DIRECTING THE ISSUANCE OF INDUSTRIAL REVENUE BONDS SERIES VI, 2005 (SPIRIT AEROSYSTEMS, INC.

PROJECT) OF SAID CITY IN THE PRINCIPAL AMOUNT OF \$80,000,000 FOR THE PURPOSE OF PROVIDING FUNDS FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION AND IMPROVEMENT OF CERTAIN INDUSTRIAL AND MANUFACTURING FACILITIES OF SPIRIT AEROSYSTEMS, INC., A DELAWARE CORPORATION, IN SEDGWICK COUNTY, KANSAS; DESIGNATING THE TRUSTEE AND THE PAYING AGENT FOR SAID BONDS; AUTHORIZING THE SALE OF SAID BONDS AND THE EXECUTION OF A BOND PURCHASE AGREEMENT THEREFOR; APPROVING AND AUTHORIZING THE EXECUTION OF AN ADMINISTRATIVE SERVICE FEE AGREEMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN RELATED INSTRUMENTS;

WHEREAS, the City of Wichita, Kansas (the "City") desires to promote and stimulate general economic welfare and prosperity and provide greater employment opportunities within the City and its environs and thereby to further promote, stimulate and develop the economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of K.S.A. 12-1740 et seq., as amended, said City is authorized to issue industrial revenue bonds of said City, and it is hereby found and determined to be advisable and in the interest and for the welfare of the City and its inhabitants that industrial revenue bonds be issued for the purpose of providing funds for the acquisition, construction, reconstruction and improvement of certain industrial and manufacturing facilities of Spirit AeroSystems, Inc., a Delaware corporation (the "Company"), located within the environs of the City in Sedgwick County, Kansas, which facilities include the Project as defined in the Lease Agreement and the Indenture of Trust herein referred to approved and authorized; and

WHEREAS, the Company will acquire a leasehold interest in the Project from the City pursuant to said Lease Agreement; and

WHEREAS, by Letter of Intent dated May 17, 2005, the City has authorized the undertaking of an industrial revenue bond financing for the Project; and

WHEREAS, said Indenture of Trust and this Ordinance provide for the authorization and issuance of a series of such bonds;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Enabling Declaration. The City Council, as governing body of the City of Wichita, Kansas, has determined and hereby declares that the Project, if in being, would promote the welfare of the City.

Section 2. Approval and Authorization of Lease Agreement. The Lease Agreement, to be dated as of December 1, 2005, between the City, as lessor, and the Company, as lessee (the "Lease"), be and the same is in all respects hereby approved, authorized and confirmed, and Carlos Mayans (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Mayor, and the City Clerk or Deputy City Clerk be and they are hereby authorized and directed to execute, attest and deliver the Lease for and on behalf of the City.

Section 3. Approval and Authorization of Indenture of Trust, Designation of Trustee and Paying Agent. The Indenture of Trust, to be dated as of December 1, 2005 (the "Indenture"), between the City and The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), be and the same is in all respects hereby approved, authorized and confirmed, and said Trustee is hereby designated to act as such thereunder, and the Trustee is hereby designated to act as Paying Agent

for the \$80,000,000 principal amount of City of Wichita, Kansas Industrial Revenue Bonds Series VI, 2005 (Spirit AeroSystems, Inc. Project), authorized by this Ordinance and the Indenture and Carlos Mayans (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Mayor, and the City Clerk or Deputy City Clerk be and they are hereby authorized and directed to execute, attest and deliver the Indenture for and on behalf of said City. As provided in the Indenture, the City assigns and pledges to the Trustee certain payments under the Lease and moneys and securities held by the Trustee under the terms of the Indenture as security for such Bonds.

Section 4. Approval, Authorization and Issuance of Bonds. There is hereby created and established an issue of bonds of the City to be known and designated as "City of Wichita, Kansas Industrial Revenue Bonds Series VI, 2005 (Spirit AeroSystems, Inc. Project)" (the "Bonds"), which shall consist of \$80,000,000 principal amount of Bonds, to be dated as of their date of first authentication and delivery, to mature on January 1, 2017, to bear interest at the rate of 7.50% per annum, payable semiannually on January 1 and July 1 in each year, commencing July 1, 2006, and to be subject to redemption at the principal amount thereof plus accrued interest thereon to the redemption date as further provided in the Indenture and shall be in form and content and include such other details as specified herein and in the Indenture. The issuance of the Bonds is in all respects hereby approved, authorized and confirmed, and Carlos Mayans (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Mayor, and the City Clerk or Deputy City Clerk are authorized and directed to execute and seal the Bonds pursuant to the Indenture, and the Trustee is hereby authorized and directed to authenticate the Bonds, to deliver the same to the purchaser designated in the Bond Purchase Agreement hereinafter referred to for and on behalf of the City upon receipt of the purchase price therefor and to deposit the proceeds thereof with itself as trustee, in the manner provided for by this Ordinance and the Indenture. The Bonds, together with the interest thereon, are not general obligations of the City, but are special obligations payable (except to the extent paid out of moneys attributable to the proceeds derived from the sale of the Bonds or to the income from the temporary investment thereof) solely from the lease payments under the Lease, and the Bond Fund and other moneys held by the Trustee, as provided in the Indenture. Neither the credit nor the taxing power of the State of Kansas or of any political subdivision of such State is pledged to the payment of the principal of the Bonds and premium, if any, and interest thereon or other costs incident thereto.

Section 5. Authorization of the Sale of the Bonds. The sale of the Bonds pursuant to the terms of the Bond Purchase Agreement, at a purchase price of 100% of the principal amount thereof plus accrued interest from the date of authentication to the date of delivery of and payment for the Bonds, is hereby approved, authorized and confirmed. Carlos Mayans (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Mayor, is hereby authorized and directed to execute the Bond Purchase Agreement, dated as of December 1, 2005, covering the sale of the Bonds.

Section 6. Approval and Authorization of Administrative Service Fee Agreement. The Administrative Service Fee Agreement, to be dated as of December 1, 2005, between the City and the Company, (the "Fee Agreement"), be and the same is in all respects hereby approved, authorized and confirmed, and Carlos Mayans (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Mayor, and the City Clerk or Deputy City Clerk be and they are hereby authorized and directed to execute and deliver the Fee Agreement, for and on behalf of the City.

Section 7. Authority To Correct Errors, Etc. Carlos Mayans (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Mayor, the City Clerk and Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

Section 8. Severability. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. It shall not be necessary for the Lease, the Indenture, the Fee Agreement or the Bond Purchase Agreement to be published in the official City paper, but all such documents shall be on file in the office of the City Clerk and shall be available for inspection by any interested party.

Section 9. Further Authority. Carlos Mayans (or in his absence, the next person in order of succession pursuant to the Order of Succession Resolution of the City), as Mayor, the City Clerk, Deputy City Clerk, City Treasurer, City Attorney and other City officials are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents or other papers and to perform all other acts as they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

Section 10. Effective Date. This Ordinance shall take effect and be in force from and after its passage and publication in the official City paper.

PASSED by the City Council this ____ day of November, 2005.

Signed by the

Carlos Mayans
Mayor

Attest:

City Clerk
[SEAL]
Approved as to Form:

Gary E. Rebenstorf
City Attorney

Agenda Item No. 24

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1024

TO: Mayor and City Council

SUBJECT: Authorize a Second Five-Year Tax Exemption (Diversified Services, Inc.)(District IV)

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Take appropriate action.

Background: On December 19, 2000, City Council approved an Economic Development Tax Exemption for Diversified Services, Inc. (Diversified). Under the previous City's Business Incentive Policy, Diversified qualified for an 100 percent tax exemption for real and personal property, and 50 percent on the real property only, for a second five-year period. On December 31, 2005, the initial five-year period for tax exemption will expire. Diversified requests City Council extend the tax exemption to include the second five-years on the ad valorem tax exemption on real property only.

Analysis: As a result of the tax exemption, Diversified committed to undertake an expansion consisting of acquisition of two formerly vacant buildings of 36,000 s.f. and 6,740 s.f., for additional manufacturing space, acquisition of new manufacturing equipment, and creation of 17 new jobs within five years. A measure of initial project commitments and outcomes are as follows:

2000 Commitment	December 31, 2005
· Renovate vacant building by December, 2000	Completed 36,000 s.f. and 6,740 s.f. facility
· Purchase Manufacturing Equipment	Purchased equipment worth over 24,950
· Create 17 new jobs in five years	Created 20 new jobs

Staff conducted a site-monitoring visit on April 8, 2004. Diversified has exceeded its projection of 17 new permanent jobs by creating 20 new jobs. Diversified increased sales by more than 98% since 2000, and diversified its customer base.

A new cost-benefit analysis was performed and the benefit-to-cost ratios are as follow:

City of Wichita	2.13 to one
Sedgwick County	1.34 to one
USD 259	1.00 to one
State of Kansas	5.59 to one

Financial Considerations: Under the City's new Business Incentive Policy, the Company qualifies for an 50% ad valorem tax exemption for an additional five-years on real property only.

Legal Considerations: The second five-year tax exemption on the real property in conjunction with the original expansion project is at the discretion of the Council.

Recommendations/Actions: It is recommended that City Council approve a second five-year ad valorem tax exemption at 50 percent on real property only.

Agenda Item No. 25

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1025

TO: Mayor and City Council

SUBJECT: Authorize a Second Five-Year Tax Exemption (Rand Graphics, Inc.) (District IV)

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Take appropriate action.

Background: On December 21, 1999, City Council approved an Economic Development Tax Exemption (EDX) for Rand Graphics, Inc. (Rand) to assist with expansion of the companies manufacturing operations. Under the previous City's Business Incentive Policy, Rand qualified for an 85 percent tax exemption for real and personal property, and 85 percent for a second five-year period. On December 31, 2005, the initial five-year period for tax exemption will expire. Rand requests City Council extend the tax exemption to include the second five-years on the ad valorem tax exemption on real and personal property.

Analysis: As a result of the tax exemption, Rand committed to undertake an expansion consisting of construction of a 10,395 s. f. addition to their manufacturing facility located at 500 S. Florence, a 5,000 s.f. addition on the second level of the same facility, purchase of machinery and equipment, and creation of 30 new jobs within five years. A measure of initial project commitments and outcomes are as follows:

1999 Commitment	December 31, 2005
· Construct new manufacturing space 2000	Completed 10,395 s.f. facility by December, Completed 5,000 s.f. facility by December,
· Purchase Manufacturing Equipment	Purchased equipment worth over 150,000
· Create 30 new jobs in five years	Created 27 new jobs

Staff conducted a site-monitoring visit on September 25, 2003. Rand has come nearly close to meeting its projection of 30 new permanent jobs by creating 27 new jobs. Rand increased sales by more than 24% since 1999, and diversified its customer base.

A new cost-benefit analysis was performed and the benefit-to-cost ratios are as follow:

City of Wichita	1.28 to one
Sedgwick County	1.21 to one
USD 259	1.18 to one
State of Kansas	2.86 to one

Financial Considerations: Under the City's new Business Incentive Policy, the Company qualifies for an 85% ad valorem tax exemption for an additional five-years on the real and personal property.

Legal Considerations: The second five-year tax exemption on the real and personal property in conjunction with the original expansion project is at the discretion of the Council.

Recommendations/Actions: It is recommended that City Council approve a second five-year ad valorem tax exemption at 85 percent on the real and personal property.

Agenda Item No. 26

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1026

TO: Mayor and City Council

SUBJECT: Authorize a Second Five-Year Tax Exemption (Perfekta, Inc.) (District VI)

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Take appropriate action.

Background: On December 19, 2000, City Council approved an Economic Development Tax Exemption (EDX) for Perfekta, Inc. (Perfekta). Under the previous City's Business Incentive Policy, Perfekta qualified for a 100 percent tax exemption for real and personal property, and 50

percent on the real property only, for a second five-year period. On December 31, 2005, the initial five-year period for tax exemption will expire. Perfekta requests City Council extend the tax exemption to include the second five-years on the ad valorem tax exemption on real property only.

Analysis: As a result of the tax exemption, Perfekta committed to undertake an expansion consisting of acquisition of an existing building and manufacturing equipment located at 480 E. 21st Street, and creation of 8 new jobs within five years. A measure of initial project commitments and outcomes are as follows:

1999 Commitment	December 31, 2005
· Renovate vacant building facility by December, 2000	Completed renovation of a 70,000 s.f.
· Purchase Manufacturing Equipment	Purchased equipment worth over 537,352
· Create 8 new jobs in five years	Created 10 new jobs

Staff conducted a site-monitoring visit on July 31, 2003. Perfekta has exceeded its projection of 8 new permanent jobs by creating 10 new jobs. Perfekta increased sales by more than 52% since 2000, and diversified its customer base.

A new cost-benefit analysis was performed and the benefit-to-cost ratios are as follow:

City of Wichita	1.40 to one
Sedgwick County	1.13 to one
USD 259	1.03 to one
State of Kansas	3.97 to one

Financial Considerations: Under the City's new Business Incentive Policy, the Company qualifies for a 50% ad valorem tax exemption for an additional five-years on real property only.

Legal Considerations: The second five-year tax exemption on the real property in conjunction with the original expansion project is at the discretion of the Council.

Recommendations/Actions: It is recommended that City Council approve a second five-year ad valorem tax exemption at 50 percent on real property only.

Agenda Item No. 27

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1027

TO: Mayor and City Council

SUBJECT: Authorize a Second Five-Year Tax Exemption (Commercial Aircraft Products, Inc.)
(District IV)

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Take appropriate action.

Background: On March 27, 2001, City Council approved an Economic Development Tax Exemption for Commercial Aircraft Products, Inc. (Commercial Aircraft). Under the previous City's Business Incentive Policy, Commercial Aircraft qualified for a 79.5 percent tax exemption for real and personal property, and 39.75 percent on the real property only, for a second five-year period. On December 31, 2005, the initial five-year period for tax exemption will expire. Commercial Aircraft requests City Council extend the tax exemption to include the second five-years on the ad valorem tax exemption on real property only.

Analysis: As a result of the tax exemption, Commercial Aircraft committed to undertake an expansion consisting of construction of a 23,900 s.f. additional manufacturing space, and acquisition of new manufacturing equipment, and creation of 5 new jobs within five years. A measure of initial project commitments and outcomes are as follows:

2000 Commitment	December 31, 2005
· Construction of building addition	Completed 23,900 s.f. facility by December, 2000
· Purchase Manufacturing Equipment	Purchased equipment worth over 516,398
· Create 5 new jobs in five years	Created 9 new jobs

Staff conducted a site-monitoring visit on July 14, 2005. Commercial Aircraft has exceeded its projection of 5 new permanent jobs by creating 9 new jobs. Commercial Aircraft increased sales by more than 34% since 2000, and diversified its customer base.

A new cost-benefit analysis was performed and the benefit-to-cost ratios are as follow:

City of Wichita	1.73 to one
Sedgwick County	1.46 to one
USD 259	1.35 to one

State of Kansas 4.69 to one

Financial Considerations: Under the City's new Business Incentive Policy, the Company qualifies for a 39.75% ad valorem tax exemption for an additional five-years on real property only.

Legal Considerations: The second five-year tax exemption on the real property in conjunction with the original expansion project is at the discretion of the Council.

Recommendations/Actions: It is recommended that City Council approve a second five-year ad valorem tax exemption at 39.75 percent on real property only.

Agenda Item No. 28

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1028

TO: Mayor and City Council

SUBJECT: Authorize a Second Five-Year Tax Exemption (Champion Industries, Inc.)
(District IV)

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Take appropriate action.

Background: On December 19, 2000, City Council approved an Economic Development Tax Exemption for Champion Industries, Inc. Under the previous City's Business Incentive Policy, Champion Industries qualified for a 89.5 percent tax exemption for real and personal property, and 44.75 percent on the real property only, for a second five-year period. On December 31, 2005, the initial five-year period for tax exemption will expire. Champion Industries requests City Council extend the tax exemption to include the second five-years on the ad valorem tax exemption on real property only.

Analysis: As a result of the tax exemption, Champion Industries committed to undertake an expansion consisting of

Acquisition of an existing building, and purchase of new manufacturing equipment, and creation of 9 new jobs within five years. A measure of initial project commitments and outcomes are as follows:

2000 Commitment	December 31, 2005
· Renovate Vacant building: facility by December, 2000	Completed renovation of a 60,900 s.f.
· Purchase Manufacturing Equipment	Purchased equipment worth over 995,600
· Create 9 new jobs in five years	Created 9 new jobs

Staff conducted a site-monitoring visit on March 24, 2005. Champion Industries has met its projection of 9 new permanent jobs by creating 9 new jobs. Champion Industries increased sales by more than 89.6% since 2000, and diversified its customer base.

A new cost-benefit analysis was performed and the benefit-to-cost ratios are as follow:

City of Wichita	1.99 to one
Sedgwick County	1.40 to one
USD 259	1.31 to one
State of Kansas	4.07 to one

Financial Considerations: Under the City's new Business Incentive Policy, the Company qualifies for a 44.75% ad valorem tax exemption for an additional five-years on real property only.

Legal Considerations: The second five-year tax exemption on the real property in conjunction with the original expansion project is at the discretion of the Council.

Recommendations/Actions: It is recommended that City Council approve a second five-year ad valorem tax exemption at 44.75 percent on real property only.

Agenda Item No. 29

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1029

TO: Mayor and City Council

SUBJECT: Agreement for Sale of Water

INITIATED BY: Water and Sewer Department

AGENDA: New Business

Recommendation: Approve the Agreement between El Paso Water Co., Inc. and the City of Derby providing for the sale of water by Wichita to specified properties within the service area boundaries for El Paso Water Co. Inc. and the City of Derby.

Background: On June 5, 2001, the City of Wichita entered into a wholesale water service Agreement with the El Paso Water Co. and by extension, the City of Derby. As part of the Agreement, service area boundaries were established that stipulated Derby had the right to serve water to customers within the stated service area boundaries.

Analysis: Local developer, Jay Russell, has expressed an interest in developing property that can generally be described as located at 63rd Street, east of the Arkansas River. The property is located in El Paso/Derby's service area boundaries, but the proximity of El Paso/Derby's water distribution system to the subject property makes service from them prohibitively expensive at this time. Hence, Jay Russell approached El Paso/Derby and Wichita concerning the possibility of having Wichita provide service to the property.

The attached Agreement, approved by Derby's City Council, provides for service by Wichita within the El Paso/Derby service area. It is stipulated, however, that said service shall be provided only within the area defined in the Agreement, and that Wichita will issue bills to customers within this area at standard applicable rates. Further, Wichita will pay Derby an amount equal to five (5) percent of all revenue derived from these customers. Said Agreement shall be in effect until 2022, at which time the current wholesale water service Agreement with El Paso/Derby will expire.

An additional provision in the Agreement is that Wichita may annex the area defined, if potable water service is extended to the area by Wichita.

Financial Considerations: There will be no negative impact to existing Water Utility customers, since it will result in an expansion of the Utility's retail customer base. In addition, annexation of the subject area includes 109 single-family lots on 51.4 acres and will expand the City's tax base.

Legal Considerations: The attached Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that City Council: 1) approve the Agreement between El Paso Water Co., Inc. and the City of Derby providing for the sale of water by Wichita; and 2) authorize the necessary signatures.

Agenda Item No. 30

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1030

TO: Mayor and City Council

SUBJECT: ZON2005-00036 – Zone change from “GO” General Office to “NR”
Neighborhood Retail. Generally located 200 feet west of Battin, north of east Central. (District
I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve, vote (9-1).

MAPD Staff Recommendations: Approve.

DAB Recommendations: Not applicable.

Background: The applicant is seeking NR Neighborhood Retail zoning to make the property located 200 feet west of Battin and north of Central attractive to a broader range of tenants than allowed by the current GO General Office zoning. The application area is .52 of an acre in size. The subject site is platted as the Dan Morgen Addition, and is developed with two office buildings and onsite parking. The applicant’s ownership has one access point, and shares a second access point with the ownership located to the west.

Surrounding land is zoned SF-5 Single-family Residential (north), B Multi-family Residential (south) and GO General Office (east and west), and developed with offices and residences. The closest commercial zoning to the application area is Limited Commercial zoning located approximately 219 feet to the west. Central Avenue is a major four-lane east-west traffic way through east central Wichita, from Main to Rock Road, carrying about 22,000 average daily trips.

The GO and NR zoning districts share the same signage controls. The primary land use difference between the two districts lies in the fact that the NR district allows retail sales and restaurant uses as a use “by right” while the GO district does not permit these uses. Special NR district regulations restrict individual commercial uses to a maximum size of 8,000 square feet. Supplemental use regulations limit restaurants to a maximum size of 2,000 square feet, and they cannot provide drive-up window service or in-vehicle food service. Outdoor commercial storage

or display is not permitted in the NR district. Compatibility setback standards are required. The existing buildings are setback approximately 34 feet from the north property line. Twenty-five feet is the maximum compatibility setback required.

Analysis: The Metropolitan Area Planning Commission reviewed this request on October 6, 2005, and they recommended approval. No one from the general public appeared to speak against the request, however one person representing Clifton Square, LLC and Barrington Elms, LP submitted a letter of protest. The letter includes allegations that the Planning Department somehow approved and encouraged the applicant to leave Clifton Square in favor of the application area. The applicant had departed from Clifton Square before planning staff was ever contacted. The letter objects to the request on the basis the proposed rezoning will provide more competition for existing retail centers and the current zoning is appropriate for the application area. The protest received represents 5.69% of the protest area. Because the protest represents less than 20% of the protest area, a vote totaling a simple majority of the members of the governing body can approve the requested zoning change.

Financial Considerations: None to the City.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC, approve the zone change and place the ordinance on first reading; or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

(150004) Published in The Wichita Eagle on _____
ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2005-00036

Request for Zone change from "GO" General Office to "NR" Neighborhood Retail, on property described as:

Lot 1 except the West 68 feet, Dan Morgen Addition, Wichita, Kansas, Sedgwick County, Kansas. Generally located 200 feet west of Battin, north of east Central.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED AT WICHITA, KANSAS, _____

Carlos Mayans - Mayor
ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form:

Gary E. Rebenstorf, City Attorney

Agenda Item No. 31

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1031

TO: Mayor and City Council

SUBJECT: ZON2005-00039 – Zone change from "B" Multi-family Residential to "OW" Office Warehouse with a Protective Overlay. Generally located midway between Meridian Avenue and West Street, 150-feet south of Central Avenue.

(District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve, subject to the provisions of the Protective Overlay #163 (10-0).

MAPD Staff Recommendations: Approve, subject to the provisions of the Protective Overlay #163

DAB Recommendations: Deny (6-5).

Background: The applicant requests “OW” Office Warehouse zoning, with a Protective Overlay (“PO”), for Lot 2, Block A, Peacock 2nd Addition. The undeveloped lot is currently zoned “B” Multi-family Residential. The applicant proposes to develop the lot with a 2,000 square foot building, using 1,600 square feet for office and 400 square feet for storage and shipping. These facilities will be used by a wholesale business that receives, stores, sells and delivers ball bearings as ordered by other firms. As described, the proposed use is considered a Wholesale or Business Service (Art.II, Sec.II-B.o). The “OW” district permits Wholesale or Business Services as a use by right. The “OW” district is intended to provide office and warehousing space for the building trades and similar businesses with operating characteristics that do not require highly visible locations or vehicular access required by retail or high intensity office uses. The “PO” proposed by the applicant would restrict the other uses on the site to a church or place of worship, day care limited and general, group home limited and general, library, parks and recreation, automated telling machine, bank or financial institution, bed and breakfast inn, medical service, general office, commercial parking, personal care service, personal improvement services, printing and copying limited, restaurant no more than 2,000 square feet in size and having no drive through or in-vehicle food service (subject to Art.III, Sec.III-D.6.t) and wholesale or business services.

There is one way in and out of the neighborhood that the site backs into, via Westridge Drive, south off of Central Avenue. Westridge is a short (540 feet long), dirt and gravel residential street that dead ends at its intersection with Newell Avenue. Newell and Donna Avenues are the only streets that intersect with Westridge in this small neighborhood. Both are dirt and gravel streets, short (300 to 400 feet long) and both dead-end against undeveloped, platted and unplatted, residentially zoned properties. The zoning in this small, contained neighborhood is a mix of “SF-5”, “TF-3” Duplex residential, and one undeveloped “MF-29” Multi-family Residential zoned lot, plus the undeveloped “B” subject site. The “SF-5” and “TF-3” zoned properties are developed as single-family residences and duplexes. There are two lots currently being developed as duplexes. Several properties in the neighborhood have large, freestanding accessory buildings next to their residences. Properties abutting and adjacent to the north side of

the site are zoned “GO” General Office and “LC” Limited Commercial. Development north of the site includes free standing holistic medicine office, retail and office. The site currently has access onto Central Avenue and Donna Street.

Analysis: DAB VI considered the request at their October 3, 2005 meeting and recommended denial (6-5) for the requested “OW” zoning with the recommended provisions of Protective Overlay (PO) #163. The provisions of PO #163 are:

- (1) Permitted uses are wholesale or business services, a church or place of worship, day care limited and general, group home limited and general, library, parks and recreation, automated telling machine, bank or financial institution, bed and breakfast inn, medical service, general office, commercial parking, personal care service, personal improvement services, printing & copying limited, and restaurants no more than 2,000-square feet in size and having no drive through or in-vehicle food service (Art.III, Sec.III-D.6.t).
- (2) No outside storage or display.
- (3) Dedication by separate instrument of complete access control along the south side of the site, where it abuts the north side of Donna Avenue. Access onto the site will be from Central Avenue.
- (4) Solid screening, a minimum of 6-feet in height, will be provided along the east, south and west sides of the property where abutting or adjacent to residential zoning.
- (5) Landscaping will be per the Landscape Ordinance, along the east, west and south sides of the site, where abutting or adjacent to residential zoning.
- (6) 35-foot maximum height for all structures.
- (7) Compatibility setback standards will apply to the site’s west side. The platted 20-foot setback will remain in place on the site’s south side. A minimum of a 5-foot setback will be in effect along the site’s east side.
- (8) Lighting will be per the Unified Zoning Code, including a maximum height of 14-feet for any pole lighting. Pole lights will be located behind the setbacks, as noted along the site’s east, south and west sides.
- (9) Signage will be per the “NR” Neighborhood Retail zoning district, with no portable signs.

The DAB found the extension of non-residential zoning on the site was not compatible with the existing “SF-5”, MF-29” and “TF-3” zoning abutting the site’s west and east sides and adjacent (across Donna Street) to its south side. The DAB was also concerned that the dedication of complete access control along the site’s Donna Street frontage would, in the future, hinder its paving. No member of the public was in attendance at the DAB meeting to speak against the requested zoning change. Staff had received no phone calls or written protest to the requested zone change prior to the DAB meeting.

The Metropolitan Area Planning Commission at their October 6, 2005 meeting recommended approval, 10-0, of the requested “OW” zoning with the provisions of Protective Overlay (PO) #163. No one spoke in opposition to the zoning change at the MAPC meeting and no phone calls were received protesting the proposed zone change.

Financial Considerations: None

Legal Considerations: A dedication, by separate instrument, of complete access control along the south side of the site, where it abuts the north side of Donna Avenue will be recorded with the Register of Deeds.

Recommendation/Actions:

1. Concur with the findings of the MAPC and approve the zone change, subject to the additional recommended provisions of the Protective Overlay District and place the ordinance on first reading; or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Agenda Item No. 32

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1032

TO: Mayor and City Council Members

SUBJECT: DR 2005-03 -- Proposed Amendments to the Wichita-Sedgwick County Subdivision Regulations. (All Districts)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Non-Consent)

Staff Recommendation: Approve the amendments.

MAPC Recommendation: Approve amendments. (10 to 0)

Background: The Urban Fringe Development Policy was approved by the Wichita City Council and the Sedgwick-County Board of County Commissioners in December of 2004. The proposed amendment incorporates this policy into the Subdivision Regulations. The amendments address

water supply and service, community sewer systems and arterial paving. In addition, as requested by both governing bodies, the Lot Bundling Regulations have been eliminated.

Legal Considerations: The amendments to the Wichita-Sedgwick County Subdivision Regulations will affect properties both inside the city limits and in the unincorporated areas of Sedgwick County. Both the City Council and the Sedgwick County Commission will need to approve the amendments in order for them to be in full effect. Legal Departments for both the City and the County have reviewed the amendments and approved as to form the respective adopting Ordinance and Resolution.

Recommendations/Action: Approve the amendments to the Wichita-Sedgwick County Subdivision Regulations and approve first reading of the Ordinance.

() Published in The Wichita Eagle _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE “WICHITA-SEDGWICK COUNTY SUBDIVISION REGULATIONS, JANUARY 28, 1999 EDITION,” AS ADOPTED BY REFERENCE IN CITY OF WICHITA CODE SEC. 28.05.010.

WHEREAS, under the authority of K.S.A. 12-741, et seq., the City of Wichita and Sedgwick County desire to amend The Wichita-Sedgwick County Subdivision Regulations to add provisions regarding urban fringe development standards and to delete Lot Bundling Development standards.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA;

SECTION 1. Section 28.05.031 of the Code of the City of Wichita shall read as follows:

Section 11-102 of “The Wichita-Sedgwick County Subdivision Regulations, January 28, 1999 Edition” as adopted by reference in Section 28.05.010 of the Code of the City of Wichita, as further amended by Section 28.05.012, is further amended to add a new definition for “Community Sewer System” and replace the definition of “Urban Growth Boundary” with the following:

“COMMUNITY SEWER SYSTEM (CSS): A sewerage treatment system designed to serve a limited number of properties in a limited geographic area; generally two or more lots within a single plat or adjoining plats.”

“URBAN GROWTH AREA: The geographical area of cities’ existing and planned municipal public facilities and services as defined in the most recently adopted version of the Wichita-Sedgwick County Comprehensive Development Plan. (For use in the Urban Growth

Area, the terms “city” or “cities” shall mean those municipalities to which the Urban Growth Area pertains.)”

SECTION 2. Section 28.05.032 of the Code of the City of Wichita shall read as follows:

Section 8-103(D) of “The Wichita-Sedgwick County Subdivision Regulations, January 28, 1999 Edition” as adopted by reference in Section 28.05.010 of the Code of the City of Wichita is hereby amended to read as follows :

Section 8-103 (D) Water Supply Systems

(1) Within an Urban Growth Area, the subdivider shall contact the city to which the Urban Growth Area pertains, as designated in the most recently adopted version of the Wichita-Sedgwick County Comprehensive Plan, to determine the financial feasibility of connecting the proposed subdivision to the city water system. If financially feasible, then the subdivision shall be connected to the city’s water system in accordance with that city’s standards.

2) Where it is not currently financially feasible to connect a subdivision to the city water system within an Urban Growth Area, the subdivider may provide a community well system.

a. Said system shall be installed to city standards applicable to the installation of the city’s municipal system in order to permit eventual connection to the municipal system when a water main is extended to the subdivision.

b. The property owner shall apply for and obtain permits for the community well from the Department of Agriculture, Division of Water Resources and from Kansas Department of Health and Environment.

c. The subdivider shall install the well and water distribution system and shall dedicate the system to the city, in accordance with an agreement with the city to assume ownership and operation of the community well and distribution systems.

(3) In all areas where a municipal or rural water supply system is not available, the subdivider may provide an on-site water supply approved by the appropriate jurisdiction.

(4) For subdivisions outside the Urban Growth Area, where individual domestic wells are proposed to supply water, well construction shall at a minimum conform to the State of Kansas requirements and regulations. Lots with individual domestic wells shall be at least one acre or larger in size. Except in the case of a single lot for which platting is required, the following standards shall also apply:

(a) A licensed geologist or licensed professional engineer with experience in hydrogeology shall determine, using the Safe Yield Methodology (as defined by Kansas Division of Water Resources rules and regulations, as may be amended from time to time), whether an adequate,

safe supply of water is available that does not impair existing water rights. That analysis shall include the following components:

- (1) A water availability evaluation shall be done for the proposed subdivision, using the center of the subdivision as the “point of diversion”. That evaluation shall include all existing water appropriations within a two-mile radius of the “point of diversion”, and the established safe-yield of the aquifer that the subdivision is projected to use for a water supply.
- (2) Maximum levels of potential contaminants shall follow recommendations and requirements of the Safe Drinking Water Act and the K-State Bulletin # MF- 912 (as may be amended from time to time). Treatment of the water to meet drinking water suitability requirements shall be provided by the subdivider.
- (b) In lieu of the requirements and standards of subsection (a), another method approved by the Kansas Division of Water Resources may be used to satisfactorily demonstrate availability and non-impairment of existing water rights.
- (5) During the platting process, perimeter easements shall be dedicated for the potential future extension of public water in accordance with the standards of the municipal entity planning to extend service to the area.

SECTION 3. Section 28.05.033 of the Code of the City of Wichita shall read as follows:

Section 8-103(C)(5) of “The Wichita-Sedgwick County Subdivision Regulations, January 28, 1999 Edition” as adopted by reference in Section 28.05.010 of the Code of the City of Wichita is hereby renumbered as Section 8-103(C)(6) and is amended to read as follows:

Section 8-103(C)(6) For any of the requirements of this Subsection (C) that call for action by a governmental agency, the requirement for municipal-type sewer facilities shall not apply if the governing body does not fulfill its obligation within a set period of time. The amount of time available to the governing body shall be determined by the Planning Commission at the time the final plat is approved. The amount of time shall not exceed five years. If the governing body fails to act within the established time period, the subdivider may proceed with approved individual treatment systems.

SECTION 4. Section 28.05.034 of the Code of the City of Wichita shall read as follows:

Section 8-103(C)(5) of “The Wichita-Sedgwick County Subdivision Regulations, January 28, 1999 Edition” as adopted by reference in Section 28.05.010 of the Code of the City of Wichita shall read as follows:

Section 8-103(C)(5) Community Sewer Systems (CSS)

- (a) CSS Oversight Committee. The County Manager shall establish an oversight committee the purpose of which shall be to review the technical feasibility of proposed community sewer systems; educate builders and the public regarding these systems; provide technical assistance

regarding the systems, if requested and as able; monitor and review CSS implementation and operation; and make other recommendations as appropriate.

(b) Maintenance Responsibility. Community sewer systems shall be owned and maintained by a city or a sewer district. The developer shall petition for inclusion of the proposed CSS in the sewer district or acceptance of the facility by a city prior to issuance of a permit. Within an Urban Growth Area, the pertinent city shall be contacted regarding the assumption of maintenance responsibility for the CSS and may require a cost-effectiveness determination before accepting that responsibility.

(c) Criteria for Use of CSS. A CSS shall be a type that has been approved by the County Manager's CSS Oversight Committee prior to the Planning Commission review of the final plat. The number of different types of CSS allowed shall be limited so that cities and sewer districts can more easily maintain all systems for which they assume responsibility.

(1) The CSS Oversight Committee shall consider for approval only nitrogen- reducing systems with a proven history based on operating records, or an approved equivalent.

(2) A CSS shall only be approved for domestic strength wastewater.

(d) Standards for Use of CSS:

(1) No building permits shall be issued until the CSS has received all applicable permits for the sewer system.

(2) Within an Urban Growth Area, a CSS shall be installed in accordance with the sanitary sewer system requirements and specifications of the pertinent city (except when otherwise allowed by a city on a case-by-case basis), including the city's criteria specified for location and connection to its municipal sewer when that system is extended to the subdivision.

(3) Easements for the approved system shall be dedicated at the time of platting.

(4) The developer shall provide a petition, as required by the city, for future extension of the sewer main to serve the property. The city may also require a petition for annexation.

(5) In a subdivision using a CSS, the minimum lot size shall be 12,000 square feet, with minimum side yard setback of twelve feet.

SECTION 5. Section 28.05.034 of the Code of the City of Wichita shall read as follows:

Section 8-103(A) entitled "Required Improvements. Streets." of "The Wichita-Sedgwick County Subdivision Regulations, January 28, 1999 Edition" as adopted by reference in Section 28.05.010 of the Code of the City of Wichita is hereby amended to add at the end of the subsection:

Paving of arterial streets shall be required in accordance with the following provisions:

(1) Within any unincorporated portion of an Urban Growth Area, all proposed subdivisions shall provide access to a paved arterial street when a Community Sewer System (CSS) is proposed or when the vehicle trips projected to be generated by the proposed subdivision will cause, cumulatively, more than 200 vehicle trips per day on the arterial street (in accordance with trip generation rates contained in the most recent edition of “Trip Generation”, Institute of Transportation Engineers).

(a) Where paving on the arterial street does not exist at the time of platting to the entrance to the subdivision, the subdivider shall petition Sedgwick County to provide the paving, in minimum increments of one-half mile, to the nearest paved arterial. To offset its costs and the debt service on obligations issued to pay for such paving, the petition shall be based on a charge to the subdivider of \$950 per acre of land platted. The fee shall be guaranteed by surety that is acceptable to the County, prior to final plat approval. The fee shall be credited to the account established by Sedgwick County for the express purpose of paving arterial streets in Urban Growth Areas and for the debt service on obligations issued by Sedgwick County for that purpose.

(b) Where paving on the arterial street does exist at the time of platting to the entrance to the subdivision, in order to offset its share of the costs of paving arterial streets and the debt service on obligations issued to pay for such paving, Sedgwick County shall charge a benefit fee, in accordance with the following fee schedule, to any property that is subdivided after the effective date of this Ordinance within the unincorporated portion of an Urban Growth Area, except as specifically exempted below. The fee shall be guaranteed by surety that is acceptable to the County, prior to final plat approval. The fee shall be credited to the account established by Sedgwick County for the express purpose of paving arterial streets in Urban Growth Areas and for the debt service on obligations issued by Sedgwick County for that purpose.

i. For properties that do not have access to an arterial street paved as of the effective date of this Ordinance, the benefit fee shall be \$950 per acre.

ii. For properties that have access to an arterial street paved as of the effective date of this Ordinance, the benefit fee shall be \$475 per acre.

iii. The benefit fee shall not apply to properties that pay fees to Sedgwick County under the provisions of Paragraph 1a. above, are outside an Urban Growth Area, or to existing structures that are not subject to platting.

Outside an Urban Growth Area, all proposed subdivisions shall provide access to a paved arterial street when the vehicle trips projected to be generated by the proposed subdivision will cause, cumulatively, more than 200 vehicle trips per day on the arterial street (in accordance with trip generation rates contained in the most recent edition of “Trip Generation”, Institute of Transportation Engineers). Where paving on an arterial street does not exist at the time of

platting to the entrance to the subdivision, the subdivider shall petition Sedgwick County to provide the paving, in minimum increments of one-half mile, to the nearest paved arterial. In the petition, the subdivider shall agree to be responsible for the entire cost of the paving and will pay the costs to Sedgwick County in full, or by surety that is acceptable to the County, prior to final plat approval.

Effect of Future Annexations. The imposition of the above fees shall apply irrespective of any future annexation by a city.

SECTION 6. Section 28.05.035 of the Code of the City of Wichita shall read as follows:

Section 8-105(B) entitled "Petitions" of "The Wichita-Sedgwick County Subdivision Regulations, January 28, 1999 Edition" as adopted by reference in Section 28.05.010 of the Code of the City of Wichita is hereby amended to add the following subsection:

(5) Petitions for future municipal services for urban developments within a city's adopted growth area must include consent to annexation. Annexation petitions will not be activated until the development is contiguous to established corporate city limits, unless approved by the County Commission.

SECTION 7. Section 28.05.036 of the Code of the City of Wichita shall read as follows:

Section 7-204 (C) of "The Wichita-Sedgwick County Subdivision Regulations, January 28, 1999 Edition" as adopted by reference in Section 28.05.010 of the Code of the City of Wichita is hereby deleted in its entirety.

SECTION 8. This Ordinance shall be included in the Code of the City of Wichita and shall be effective upon its adoption and publication once in the official City newspaper.

PASSED AND ADOPTED by the governing body at Wichita, Kansas, this ____ day of _____, 2005.

ATTEST:

Karen Sublett, City Clerk

Carlos Mayans, Mayor

Approved as to form:

Gary E. Rebenstorf, Director of Law

Agenda Item 33

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1033

TO: Mayor and City Council Members

SUBJECT: SUB 2005-45 -- Plat of Falcon Falls Commercial Addition, Located on the Northwest Corner of Hillside and 45th Street North. (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (10-0)

Background: This site, consisting of two lots on 20.46 acres, and is located within Wichita's city limits. A zone change (ZON 2005-10) from SF-5, Single-family Residential District and LC, Limited Commercial District to LC, Limited Commercial District was approved. The Falcon Falls Commercial Community Unit Plan (CUP 2005-14/DP-283) was also approved for the site, and a CUP Certificate has been submitted.

Analysis: Petitions, 100 percent, and a Certificate of Petitions have been submitted for sewer, water main, drainage, left-turn lane and pavement improvements. In accordance with the CUP approval, a Cross-lot Access and Easement was submitted to assure internal vehicular movement between the lots.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within 30 days. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

Financial Consideration: None.

Legal Considerations: The CUP Certificate, Certificate of Petitions and Cross-lot Access and Easement will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and approve first reading of the Ordinance.

(150004) Published in The Wichita Eagle on _____

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON 2005-10

Request for a zone change from SF-5, Single-family Residential District and LC, Limited Commercial District to LC, Limited Commercial District, on property described as:

Lots 1 and 2, Block A, Falcon Falls Commercial Addition, Wichita, Sedgwick County, Kansas.

Generally located at the northwest corner of Hillside and 45th Street North.

SECTION 2. That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 2005.

Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form:

Gary E. Rebenstorf, City Attorney

Agenda Item No. 34

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1034

TO: Mayor and City Council Members

SUBJECT: SUB 2005-63 -- Plat of Country Hollow Addition, Located South of Kellogg and on the East Side of 127th Street East. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (10-0)

Background: This site, consisting of 188 lots on 112.2 acres, has recently been annexed into Wichita's city limits. This site is zoned SF-5, Single-Family Residential District.

Analysis: Petitions, 100 percent, and a Certificate of Petitions have been submitted for sanitary sewer, drainage, municipal water, paving and traffic improvements. As requested by City Engineering, an Off-site Drainage Agreement has been submitted. A Restrictive Covenant was submitted to provide for the creation of a Lot Owners' Association for the ownership and maintenance of the proposed reserves.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within thirty (30) days.

Legal Considerations: The Certificate of Petitions, Off-site Drainage Agreement and Restrictive Covenant will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat and authorize the necessary signatures.

Agenda Item No. 35

City of Wichita
City Council Meeting
November 8, 2005

Agenda Report No. 05-1035

TO: Mayor and City Council Members

SUBJECT: SUB 2005-78 -- Plat of Falcon Falls Third Addition, Located on the North Side of 45th Street North and on the West Side of Hillside. (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (12-0)

Background: This site, consisting of 145 lots on 93.39 acres, is located in Wichita's city limits. This site is zoned SF-5, Single-Family Residential District.

Analysis: Petitions, 100 percent, and a Certificate of Petitions have been submitted for sewer, water, paving and left-turn lane improvements. A Restrictive Covenant was submitted referencing limitations on lot developments until FEMA's approval. Restrictive Covenants were submitted to 1) provide for the creation of a Lot Owners' Association for the ownership and maintenance of the proposed reserves; and 2) provide four off-street parking spaces per dwelling unit on each lot that abuts a 58-foot street.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within thirty (30) days.

Legal Considerations: The Certificate of Petitions and Restrictive Covenants will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, adopt the Resolutions and authorize the necessary signatures.